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# THE GENERAL STATUTES OF NORTH CAROLINA

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**1983 SUPPLEMENT**

OCT 31 1983

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**Annotated, under the Supervision of the Department of  
Justice, by the Editorial Staff of the Publishers**

*Under the Direction of*

**D. P. HARRIMAN, S. C. WILLARD, W. L. JACKSON  
AND K. S. MAWYER**

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## **Volume 2B, Part I**

**1982 Replacement**

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Annotated through 303 S.E.2d 102. For complete scope of  
annotations, see scope of volume page.

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**Place in Pocket of Corresponding Volume of Main Set.**

**THE MICHIE COMPANY**  
*Law Publishers*  
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1983

I, J. G. Esch, Jr.  
1983/12/15  
J. G. Esch, Jr.

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## Scope of Volume

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### Statutes:

Permanent portions of the general laws enacted by the General Assembly through the 1983 Regular Session and the 1983 Extra Session affecting Chapters 53 through 57B of the General Statutes.

### Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

South Eastern Reporter 2nd Series through Volume 303, p. 102.  
Federal Reporter 2nd Series through Volume 707, p. 523.  
Bankruptcy Reports through Volume 29, p. 815.  
Federal Supplement through Volume 562, p. 911.  
Federal Rules Decisions through Volume 97, p. 544.  
Supreme Court Reporter through Volume 103, p. 2468.  
North Carolina Law Review through Volume 61, p. 744.  
Wake Forest Law Review through Volume 19, p. 150.  
Campbell Law Review through Volume 5, p. 262.  
Duke Law Journal through 1983, p. 195.  
North Carolina Central Law Journal through Volume 13, p. 282.  
Opinions of the Attorney General.







## Preface

This Supplement to Replacement Volume 2B, Part I contains the general laws of a permanent nature enacted by the General Assembly since publication of the replacement volume through the 1983 Regular Session and the 1983 Extra Session which are within the scope of such volume, and brings to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections except sections for which catchlines are carried for the purpose of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P. O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.





# The General Statutes of North Carolina

## 1983 Supplement

### Volume 2B, Part I

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#### ARTICLE 1.

#### Definitions.

#### § 53-1. "Bank," "surplus," "undivided profits," and other words defined.

The following definitions shall be applied to the terms used in this Chapter:

- (9) Unimpaired Capital Fund. — The term "unimpaired capital fund" means the total of the amount of unimpaired common stock, preferred stock, surplus, undivided profits, reserve for contingencies and other capital reserves (excluding accrued dividends on preferred stock and limited life preferred stock), mandatory convertible instruments, allowance for possible loan losses, and the amount of capital debentures or notes, convertible or otherwise, having an average original maturity of at least seven years, which have been specifically desig-



nated as part of the bank's unimpaired capital fund by resolution duly adopted by the board of directors of the bank; provided, that upon payment of such capital debentures or notes or upon accumulation of funds in a sinking fund for amortization of such debentures or notes, unimpaired capital fund shall be reduced by the amount of such payment or accumulation. The terms and conditions of any issue of or prepayment of capital debentures or notes must have the prior written approval of the Commissioner of Banks affirming that in his opinion such issue or prepayment is in the best interest of the depositors, creditors and stockholders of the bank. (1921, c. 4, s. 1; C.S., s. 216(a); 1927, c. 47, s. 1; 1931, c. 243, s. 5; 1945, c. 743, s. 1; 1967, c. 789, s. 21; 1979, c. 483, s. 2; 1983, c. 214, s. 1.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1983 amend-

ment, effective April 22, 1983, inserted the language beginning "undivided profits, reserve" and ending "possible loan losses" in the first sentence of subdivision (9).

## ARTICLE 5.

### *Stockholders.*

#### § 53-42.1. Change in bank control or management.

**Legal Periodicals.** — For survey of 1981 commercial law, see 60 N.C.L. Rev. 1238 (1982).

## ARTICLE 6.

### *Powers and Duties.*

#### § 53-43. General powers.

In addition to the powers conferred by law upon private corporations, banks shall have the power:

- (4) Nothing contained in this section shall be deemed to authorize banking corporations to engage in the business of dealing in investment securities: Provided, however, that the term "dealing in investment securities" as used herein, shall not be deemed to include the purchasing and selling of securities without recourse, solely upon order, and for the account of, customers; and provided further, that "investment securities," as used herein, shall not be deemed to include obligations of the United States, or general obligations of any state or of any political subdivision thereof, or of cities, towns, or other corporate municipalities of any state or obligations issued under authority of the Federal Farm Loan Act, as amended, or issued by the federal home loan banks or the Home Owner's Loan Corporation.

Any provision in conflict with this subdivision contained in the articles of incorporation heretofore issued to any banking corporation is hereby revoked.

(1921, c. 4, s. 26; 1923, c. 148, s. 5; C.S., s. 220(a); Ex. Sess. 1924, c. 67; 1925, c. 279; 1927, c. 47, s. 5; 1931, c. 243, s. 5; 1933, c. 303; 1935, c. 81, s. 1; c. 82; 1937, c. 154; 1941, c. 77; 1943, c. 234; 1955, c. 590; 1961, c. 954; 1967, c. 789, s. 6; 1969, c. 541, s. 8; c. 1303, ss. 8, 9; 1979, c. 483, s. 4; 1981, c. 671, s. 7; 1983, c. 214, s. 2.)



**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** —

The 1983 amendment, effective April 22,

1983, deleted "either directly or through subsidiary corporations" following "dealing in investment securities" near the beginning of the first paragraph of subdivision (4).

## § 53-47. Limitations on investment in stocks.

No bank shall make any investment in the capital stock of any other state or national bank: Provided, that nothing herein shall be construed to prevent banks doing business under this Chapter from subscribing to or purchasing, upon such terms as may be agreed upon, the capital stock of clearing corporations as defined in G.S. 25-8-102(3), the capital stock of banks organized under that act of Congress known as the "Edge Act" or the capital stock of central reserve banks whose capital stock exceeds one million dollars (\$1,000,000). To constitute a central reserve bank as contemplated by this Chapter, at least fifty percent (50%) of the capital stock of such bank shall be owned by other banks. The investment of any bank in the capital stock of such central reserve bank or bank organized under the act of Congress commonly known as the "Edge Act," shall at no time exceed ten percent (10%) of the paid-in capital and permanent surplus of the bank making same. No bank shall invest more than seventy-five percent (75%) of its unimpaired capital fund in the stocks of other corporations, firms, partnerships, or companies, unless such stock is purchased to protect the bank from loss. The foregoing limitation shall not apply to stock or ownership interests acquired in corporations, firms, partnerships or companies which hold banking premises or which are bank operating subsidiaries of such bank. The term "invest" shall be deemed to include operating a business entity acquired by the bank, provided, however, that no bank shall make any such investment resulting in operations which are not closely related to banking without the prior written approval of the Commissioner of Banks. The Commissioner of Banks shall monitor the impact of investment activities of banks under this section on the safety and soundness of such banks. Any stocks owned or hereafter acquired in excess of the limitations herein imposed shall be disposed of at public or private sale within six months after the date of acquiring the same, and if not so disposed of they shall be charged to profit and loss account, and no longer carried on the books as an asset. The limit of time in which said stocks shall be disposed of or charged off the books of the bank may be extended by the Commissioner of Banks if in his judgment it is for the best interest of the bank that such extension be granted; provided that the limitations imposed in this section on the ownership of stock in or securities of corporations is suspended to the extent (and to that extent only) that any bank operating under the supervision of the Commissioner of Banks may subscribe for and purchase shares of stock in or debentures, bonds or other types of securities of any corporation organized under the laws of the United States of America for the purpose of insuring to depositors a part or all of their funds on deposit in banks where and to such extent as such stock or security ownership is required in order to obtain the benefits of such deposit insurance for its depositors. (1921, c. 4, s. 28; C.S., s. 220(c); 1931, c. 243, s. 5; 1935, c. 81, s. 3; 1973, c. 497, s. 7; 1983, c. 214, s. 3.)

**Effect of Amendments.** — The 1983 amendment, effective April 22, 1983, substituted "seventy-five percent (75%) of its unimpaired capital fund" for "fifty percent (50%) of its

permanent surplus" in the fourth sentence and inserted the present fifth, sixth, and seventh sentences.



## § 53-48. Limitation of loans.

(a) The total loans and extensions of credit, both direct and indirect, by a bank to a person, other than a municipal corporation for money borrowed, including in the liabilities of a firm the liabilities of the several members thereof, outstanding at one time and not fully secured, as determined in a manner consistent with subsection (b) of this section, by collateral having a market value at least equal to the amount of the loan or extension of credit shall not exceed fifteen percent (15%) of the unimpaired capital fund of the bank.

(b) The total loans and extensions of credit, both direct and indirect, by a bank to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding shall not exceed ten percent (10%) of the unimpaired capital fund of the bank. This limitation shall be separate from and in addition to the limitation contained in subsection (a) above.

(c) The discount of bills of exchange drawn in good faith against actual existing values, the discount of solvent trade acceptances or other solvent commercial or business paper actually owned by the person negotiating the same, loans or extensions of credit secured by a segregated deposit account in the lending bank, the purchase of bankers acceptances of the kind described in section 13 of the Federal Reserve Act and issued by other banks, and the purchase of any notes and the making of any loans, secured by not less than a like face amount of bonds of the United States, or an agency of the United States, or other obligations guaranteed by the United States Government, or State of North Carolina or certificates of indebtedness of the United States, or agency thereof, or other obligations guaranteed by the United States Government, shall not be considered as money borrowed within the meaning of this section: Provided, however, that the limitations of this section shall not apply to loans or obligations to the extent that they are secured or covered by guarantees or by commitments or agreements to take over or purchase the same, made by any federal reserve bank or by the United States or any department, board, bureau, commission or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States.

(d) For purposes of this section, the term "person" shall be deemed to include an individual, or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization or any other form of entity not specifically listed herein. Loans or extensions of credit to one person include loans made to other persons when the proceeds of the loans or extensions of credit are to be used for the direct benefit of the first person or the persons are engaged in a common enterprise. The Commissioner of Banks shall monitor the lending activities of banks under this section for undue credit concentrations and inadequate risk diversification which could adversely affect the safety and soundness of such banks. (1921, c. 4, s. 29; 1923, c. 148, s. 6; C.S., s. 220(d); 1925, c. 119, s. 1; 1927, c. 47, s. 7; 1937, c. 419; 1943, c. 204; 1945, c. 127, s. 1; 1967, c. 789, s. 9; 1979, c. 483, s. 6; 1983, c. 214, s. 4.)

**Effect of Amendments.** — The 1983 amendment, effective April 22, 1983, rewrote this section.



## § 53-62. Establishment of branches; tellers' windows and off-premises customer-bank communications terminals.

(c) Such branch banks shall be operated as branches of and under the name of the parent bank, and under the control and direction of the board of directors and executive officers of said parent bank. The board of directors of the parent bank shall elect a cashier or such other officers as may be required to properly conduct the business of such branch: Provided, that the Commissioner of Banks shall not authorize the establishment of any branch or teller's window, the capital of whose parent bank is not sufficient in an amount to provide for the capital of at least one hundred thousand dollars (\$100,000) for the parent bank, and a capital of at least one hundred thousand dollars (\$100,000) for each branch or teller's window which it proposed to establish in cities or towns of 3,000 population or less; at least one hundred fifty thousand dollars (\$150,000) in cities or towns whose population exceeds 3,000 but does not exceed 10,000; at least two hundred thousand dollars (\$200,000) in cities or towns whose population exceeds 10,000, but does not exceed 25,000; at least two hundred fifty thousand dollars (\$250,000) in cities or towns whose population exceeds 25,000, but does not exceed 50,000; at least three hundred thousand dollars (\$300,000) in cities or towns whose population exceeds 50,000. The provisions of this subsection shall not be retroactive with respect to branches or teller's windows established or approved by the State Banking Commission prior to June 11, 1963. If a bank which hereafter proposes to establish a branch or teller's window is deficient in capital stock as measured by the above set-forth formula, it shall not be necessary for such bank to provide or allocate additional capital for branches or teller's windows established or approved by the State Banking Commission prior to June 11, 1963, until such a time as such bank makes application for an additional branch or teller's window. At that time sufficient capital and surplus must be allocated to bring the parent bank and all branches and teller's windows into compliance with the above requirements. The bank may, at its option, allocate capital stock and unimpaired surplus, or either, to its branches and teller's windows and may determine the proportion of each, or may allocate all capital stock or all unimpaired surplus. In applying this section, population shall be ascertained by the last preceding national census; provided, however, with respect to any branch or teller's windows established or approved by the State Banking Commission before June 11, 1963, population shall be ascertained by the last national census preceding the establishment of such branch.

(1921, c. 4, s. 43; Ex. Sess. 1921, c. 56, s. 2; C.S., s. 220(r); 1927, c. 47, s. 8; 1931, c. 243, s. 5; 1933, c. 451, s. 1; 1935, c. 139; 1947, c. 990; 1953, c. 1209, ss. 2, 5; 1963, c. 793, s. 3; 1967, c. 789, s. 11; 1975, cc. 553, 850; 1983, c. 214, s. 5.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1983 amendment, effective April 22, 1983, deleted "and a board of managers or loan committee shall be

responsible for the conduct and management of said branch, but not of the parent bank of any branch save that of which they are officers, managers, or committee" preceding the proviso in the second sentence of subsection (c).

## § 53-64. Unlawful to loan on bank's own stock or stock of parent bank holding company.

It shall be unlawful for any bank to make any loan secured by the pledge of its own shares of stock or the stock of its parent bank holding company, nor shall any bank be the holder as pledgee, or as purchaser, of any portion of its



capital stock or of the capital stock of its parent bank holding company unless such stock is purchased or pledged to it to prevent loss upon a debt previously contracted in good faith. Provided, that whenever any bank shall have shares of its own stock or the stock of its parent bank holding company sold to, or pledged to it, for the purpose of preventing a loss upon a debt previously contracted, it shall dispose of all such shares of stock within a period of six months from the date such stock was sold or pledged to it and if not so disposed of, the same shall be charged to profit and loss and no longer carried as an asset of the bank. (1921, c. 4, s. 45; C.S., s. 220(t); 1927, c. 47, s. 9; 1983, c. 214, s. 6.)

**Effect of Amendments.** — The 1983 amendment, effective April 22, 1983, inserted "or the stock of its parent bank holding company" in

the first and second sentences and inserted "or of the capital stock of its parent bank holding company" in the first sentence.

§ 53-66: Repealed by Session Laws 1983, c. 214, s. 7, effective April 22, 1983.

### § 53-67. Banks controlled by boards of directors.

The corporate powers, business, and property of banks doing business under this Chapter shall be exercised, conducted, and controlled by its board of directors, which shall meet at least quarterly. Such board shall consist of not less than five directors, to be chosen by the stockholders, and shall hold office for the term for which they are elected, and until their successors are elected and qualified. The annual meeting of stockholders for the election of directors shall be held at such time as may be designated by the charter or the bylaws of the bank but shall be held not later than the thirty-first day of March in each year. In addition to the foregoing powers relating to the fixing of the number and the election of directors, the stockholders of a bank, at any stockholders' meeting, special or annual, may authorize not more than two additional directorships which may be left unfilled and to be filled in the discretion of the directors of the institution during the interval between such stockholders' meetings. Aside from the specific provisions of this section, the number, election, term and classification of the directors of banks doing business under this Chapter shall be governed by the provisions of the Business Corporation Act. (1921, c. 4, s. 48; C.S., s. 220(w); 1925, c. 170; 1965, c. 188; 1967, c. 789, s. 12; 1983, c. 24, ss. 1, 2.)

**Effect of Amendments.** — The 1983 amendment, effective February 22, 1983, substituted "the term for which they are elected" for "one year" in the second sentence and added the last sentence.

**Legal Periodicals.** — For note, "The Need for Antitrust Legislation Tailored to the Specific Concerns of Bank-Nonbank Director Interlocks," see 1982 Duke L.J. 938.

## ARTICLE 7.

### *Officers and Directors.*

### § 53-80. Qualifications of directors.

Every director of a bank doing business under this Chapter shall be the owner and holder of shares of stock in the bank representing not less than one thousand dollars (\$1,000) book value as of the last business day of the calendar year immediately prior to the election of such director. For the purpose of this section, book value shall consist of common capital stock, unimpaired surplus, undivided profits, and reserves for contingencies if any such reserves are segre-



gations of capital. Where directors are appointed during the interval between stockholders' meetings pursuant to the provisions of G.S. 53-67, such directors shall hold the required qualifying shares as of the time of their appointment. Notwithstanding the proviso at the end of this section, where the bank is a wholly owned subsidiary, the required qualifying shares shall be shares in the parent corporation, whether or not the bank was doing business before February 18, 1921. And every such director shall hold such shares in his own name unpledged and unencumbered in any way. The office of any director at any time violating any of the provisions of this section shall immediately become vacant, and the remaining directors shall declare his office vacant and proceed to fill such vacancy forthwith. Not less than three fourths of the directors of every bank doing business under this Chapter shall be residents of the State of North Carolina: Provided, that as to banks doing business before February 18, 1921, the requirements as to amount of stock owned by a director shall not apply unless the Commissioner of Banks shall rule that such director is not bona fide discharging his duties. (1921, c. 4, s. 51; C.S., s. 221(c); 1931, c. 243, s. 5; 1979, c. 483, s. 8; 1983, c. 214, s. 8.)

**Effect of Amendments.** — The 1983 amendment, effective April 22, 1983, inserted "Notwithstanding the proviso at the end of this section" at the beginning of the fourth sentence

and added "whether or not the bank was doing business before February 18, 1921" at the end of the fourth sentence.

## § 53-91. When officers and employees may borrow.

(d) In no event shall loans the total of which exceeds one hundred thousand dollars (\$100,000) be made by any bank to any officer or employee of such bank; Provided, however, this limitation shall not apply to loans extended to any officer or employee for the purchase of primary residences.

(1921, c. 4, s. 62; C.S., s. 221(n); 1925, c. 119, s. 2; 1927, c. 47, s. 12; 1967, c. 789, s. 15; 1969, c. 41; 1979, c. 483, s. 9; 1983, c. 214, s. 9.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1983 amendment, effective April 22, 1983, added the proviso at the end of subsection (d).

## ARTICLE 8.

### *Commissioner of Banks and State Banking Commission.*

## § 53-92. Appointment of Commissioner of Banks; State Banking Commission.

On or before April 1, 1983, and quadrennially thereafter, the Governor shall appoint a Commissioner of Banks subject to confirmation by the General Assembly in joint session. The name of the Commissioner of Banks shall be submitted to the General Assembly on or before February 1, of the year in which the term of his office begins. The term of office for the Commissioner of Banks shall be four years. In case of a vacancy in the office of Commissioner of Banks for any reason prior to the expiration of his term of office, the name of his successor shall be submitted by the Governor to the General Assembly, not later than four weeks after the vacancy arises. If a vacancy arises in the office when the General Assembly is not in session, the Commissioner of Banks shall be appointed by the Governor to serve on an interim basis pending confirmation by the General Assembly.



The State Banking Commission, which has heretofore been created, shall consist of the State Treasurer, who shall serve as an ex officio member thereof, 12 members appointed by the Governor, and two members appointed by the General Assembly under G.S. 120-121, one of whom shall be appointed upon the recommendation of the President of the Senate and one of whom shall be appointed upon the recommendation of the Speaker of the House of Representatives. The Governor shall appoint five practical bankers and seven persons selected primarily as representatives of the borrowing public. The person appointed by the General Assembly upon the recommendation of the President of the Senate shall be a practical banker. The person appointed by the General Assembly upon the recommendation of the Speaker of the House shall be a person selected primarily as a representative of the borrowing public. The persons selected primarily as representatives of the borrowing public shall not be employees or directors of any financial institution nor shall they have any interest in any regulated financial institution other than as a result of being a depositor or borrower. Under this section, no person shall be considered to have an interest in a financial institution whose interest in any financial institution does not exceed one-half of one percent ( $\frac{1}{2}$  of 1%) of the capital stock of that financial institution. These members of the Commission shall be selected so as to fully represent the consumer, industrial, manufacturing, professional, business and farming interests of the State. No person shall serve on the Commission for more than two complete consecutive terms. As the terms of office of the appointive members of the Commission expire, their successors shall be appointed by the person appointing them, for terms of four years each. Any vacancy occurring in the membership of the Commission shall be filled by the appropriate appointing officer for the unexpired term, except that vacancies among members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. The appointed members of the Commission shall receive as compensation for their services the same per diem and expenses as is paid to the members of the Advisory Budget Commission. This compensation shall be paid from the fees collected from the examination of banks as provided by law.

The Banking Commission shall meet at such time or times, and not less than once every three months, as the Commission shall, by resolution, prescribe, and the Commission may be convened in special session at the call of the Governor, or upon the request of the Commissioner of Banks. The State Treasurer shall be chairman of the said Commission.

No member of said Commission shall act in any matter affecting any bank in which he is financially interested, or with which he is in any manner connected. No member of said Commission shall divulge or make use of any information coming into his possession as a result of his service on such Commission, and shall not give out any information with reference to any facts coming into his possession by reason of his services on such Commission in connection with the condition of any State banking institution, unless such information shall be required of him at any hearing at which he is duly subpoenaed, or when required by order of a court of competent jurisdiction.

The Commissioner of Banks shall act as the executive officer of the Banking Commission, but the Commission shall provide, by rules and regulations, for hearings before the Commission upon any matter or thing which may arise in connection with the banking laws of this State upon the request of any person interested therein, and review any action taken or done by the Commissioner of Banks.

The Banking Commission is hereby vested with full power and authority to supervise, direct and review the exercise by the Commissioner of Banks of all powers, duties, and functions now vested in or exercised by the Commissioner of Banks under the banking laws of this State; any party to a proceeding before the Banking Commission may, within 20 days after final order of said Commis-



sion and by written notice to the Commissioner of Banks, appeal to the Superior Court of Wake County for a final determination of any question of law which may be involved. The cause shall be entitled "State of North Carolina on Relation of the Banking Commission against (here insert name of appellant)." It shall be placed on the civil issue docket of such court and shall have precedence over other civil actions. In the event of an appeal the Commissioner shall certify the record to the Clerk of Superior Court of Wake County within 15 days thereafter. (1931, c. 243, s. 1; 1935, c. 266; 1939, c. 91, s. 1; 1949, c. 372; 1953, c. 1209, ss. 4, 6; 1961, c. 547, s. 2; 1967, c. 789, s. 16; 1969, c. 844, s. 6; c. 920; 1979, c. 478, s. 1; 1981, c. 884, s. 1; 1983, c. 328, ss. 1, 3.)

**Editor's Note.** — Session Laws 1983, c. 328, s. 2, provides that the initial terms of persons appointed to fill the three positions on the State Banking Commission created in s. 1 of the act shall expire April 1, 1987.

Session Laws 1983, c. 328, s. 5, provides that

the term of office of the Commissioner of Banks holding office on June 1, 1983, shall not be affected by the provisions of the act.

**Effect of Amendments.** —

The 1983 amendment, effective June 1, 1983, rewrote the first and second paragraphs.

### § 53-93.1. Deputy commissioner.

The Commissioner of Banks shall appoint, with approval of the Governor, and may remove at his discretion a deputy commissioner, who, in the event of the absence, death, resignation, disability or disqualification of the Commissioner of Banks, or in case the office of Commissioner shall for any reason become vacant, shall have and exercise all the powers and duties vested by law in the Commissioner of Banks. He shall receive such compensation as shall be fixed by the General Assembly in the Budget Appropriation Act.

Irrespective of the conditions under which the deputy commissioner may exercise the powers and perform the duties of the Commissioner of Banks, pursuant to the preceding paragraph, such deputy commissioner, in addition thereto, is hereby authorized and empowered at any and all times, at the discretion of the Commissioner of Banks, to perform such duties and exercise such powers of the Commissioner of Banks in the name of and on behalf of the Commissioner as the Commissioner, in his discretion, may direct.

This section is not to be construed to modify the provisions of G.S. 53-97. (1959, c. 273; 1983, c. 717, s. 8.)

**Editor's Note.** — Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

**Effect of Amendments.** — The 1983 amendment, effective July 11, 1983, substituted "by

the General Assembly in the Budget Appropriation Act" for "by the Governor with the approval of the Advisory Budget Commission" in the second sentence of the first paragraph.

### § 53-96. Salary of Commissioner; legal assistance and compensation.

The salary of the Commissioner of Banks shall be fixed by the General Assembly in the Budget Appropriation Act. The Governor may in his discretion appoint and assign to the Commissioner of Banks such legal assistance as in his judgment may be necessary. Compensation shall be within the salary classification for attorneys established by the State Personnel Commission. (1931, c. 243, s. 6; 1957, c. 541, s. 3; 1979, 2nd Sess., c. 1137, s. 53; 1983, c. 717, s. 9.)

**Editor's Note.** — Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the

Separation of Powers Act of 1983."

**Effect of Amendments.** — The 1983 amend-



ment, effective July 11, 1983, substituted "by the General Assembly in the Budget Appropriation Act" for "by the Governor subject to the

approval of the Advisory Budget Commission" at the end of the first sentence.

**§ 53-97:** Repealed by Session Laws 1983, c. 328, s. 4, effective June 1, 1983.

**Cross References.** — As to the filling of vacancies in the office of the Commissioner of Banks, see now § 53-92.

## ARTICLE 15.

### *North Carolina Consumer Finance Act.*

**§ 53-166. Scope of Article; evasions; penalties; loans in violation of Article void.**

#### CASE NOTES

**Cited** in Barclays American/Credit Co. v. Riddle, 57 N.C. App. 662, 292 S.E.2d 177 (1982).

**§ 53-168. License required; showing of convenience, advantage and financial responsibility; investigation of applicants; hearings; existing businesses; contents of license; transfer; posting.**

#### CASE NOTES

**Legislative History.** — For consideration of the legislative history of subsection (c) of this section and §§ 53-173, 53-176.1 and 53-191 with regard to lenders making loans secured by

motor vehicles, see Barclays American/Credit Co. v. Riddle, 57 N.C. App. 662, 292 S.E.2d 177, cert. denied, 306 N.C. 555, 294 S.E.2d 369 (1982).

**§ 53-173. Maximum rate of charge; computation of charges; limitation on interest after judgment; limitation on interest after maturity of the loan; inapplicability of other sections.**

(e) Inapplicability of Other Sections. — The provisions of G.S. 53-173.1, 53-174 and 53-175 (a) and (b) shall not apply to any loan made pursuant to the provisions of this section.

(1961, c. 1053, s. 1; 1969, c. 1303, ss. 13, 17-22; 1973, c. 1042, s. 3; 1975, c. 110, s. 1; 1979, c. 33, s. 2; 1981, c. 561, ss. 1-3; 1983, c. 126, s. 13.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Editor's Note.** — Session Laws 1981, c. 561, s. 9, as amended by Session Laws 1983, c. 68, s. 1, provides: "Sec. 9. This act shall become effective



tive 30 days after ratification and shall apply only to loans made after the effective date of this act." The 1981 act was ratified June 12, 1981.

**Effect of Amendments.** —

The 1983 amendment, effective March 31, 1983, and applicable only to loans made after its effective date, inserted "(a) and (b)" following "53-175" in subsection (e).

## CASE NOTES

**Legislative History.** — For consideration of the legislative history of this section and §§ 53-168(c), 53-176.1 and 53-191 with regard to lenders making loans secured by motor vehicles, see *Barclays American/Credit Co. v. Riddle*, 57 N.C. App. 662, 292 S.E.2d 177, cert. denied, 306 N.C. 555, 294 S.E.2d 369 (1982).

**This section does not limit type of security that lender may take.** *Barclays American/Credit Co. v. Riddle*, 57 N.C. App. 662, 292 S.E.2d 177, cert. denied, 306 N.C. 555, 294 S.E.2d 369 (1982).

**Section 53-176.1 is not an implied limitation on this section.** *Barclays American/Credit Co. v. Riddle*, 57 N.C. App. 662, 292 S.E.2d 177, cert. denied, 306 N.C. 555, 294 S.E.2d 369 (1982).

**Limitation imposed by § 53-180(f) only proscribes the use of interests in real property as security.** *Barclays American/Credit Co. v. Riddle*, 57 N.C. App. 662, 292 S.E.2d 177, cert. denied, 306 N.C. 555, 294 S.E.2d 369 (1982).

**Only Collateral Not Available Is Real Property.** — The only section of this Article which expressly limits the type of collateral

available to a general lender operating under this section is § 53-180(f). *Barclays American/Credit Co. v. Riddle*, 57 N.C. App. 662, 292 S.E.2d 177, cert. denied, 306 N.C. 555, 294 S.E.2d 369 (1982).

**No Legislative Intent to Exclude Motor Vehicles as Security.** — Subsection (f) of § 53-180 refers specifically to this section, and it may be reasonably inferred that had the Legislature intended to prohibit the use of motor vehicles as security for loans made under this section, it would have so stated. *Barclays American/Credit Co. v. Riddle*, 57 N.C. App. 662, 292 S.E.2d 177, cert. denied, 306 N.C. 555, 294 S.E.2d 369 (1982).

**General Lender May Take Interest in Motor Vehicle.** — Under the pertinent statutes, and particularly § 53-180(f), a general lender operating under this section is entitled to secure any loan by taking a security interest in a motor vehicle. *Barclays American/Credit Co. v. Riddle*, 57 N.C. App. 662, 292 S.E.2d 177, cert. denied, 306 N.C. 555, 294 S.E.2d 369 (1982).

## § 53-175. Default charge; fee for returned checks.

(c) A licensee may collect the fee for returned checks to the extent permitted by G.S. 25-3-512. This subsection shall apply to any loan made by any licensee under this Article. (1961, c. 1053, s. 1; 1969, c. 1303, s. 23; 1981, c. 561, s. 4; 1983, c. 126, s. 12.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Editor's Note.** — Session Laws 1981, c. 561, s. 9, as amended by Session Laws 1983, c. 68, s. 1, provides: "Sec. 9. This act shall become effective 30 days after ratification and shall apply

only to loans made after the effective date of this act." The 1981 act was ratified June 12, 1981.

**Effect of Amendments.** —

The 1983 amendment, effective March 31, 1983, and applicable only to loans made after its effective date, added subsection (c).

## § 53-176. Optional rates, maturities and amounts.

In lieu of making loans in the amount, for the term and at the charges stated respectively in G.S. 53-166, 53-173 and 53-180, a licensee may at any time elect to make loans in installments not exceeding ten thousand dollars (\$10,000) and which shall not be repayable in less than six months or more than 84 months and which shall not be secured by deeds of trust or mortgages on real estate and which are repayable in substantially equal consecutive monthly payments and to charge and collect interest in connection therewith which shall not exceed the following actuarial rates:



- (1) With respect to a loan not exceeding seven thousand five hundred dollars (\$7,500), thirty percent (30%) per annum on that part of the unpaid principal balance not exceeding one thousand dollars (\$1,000) and eighteen percent (18%) per annum on the remainder of the unpaid principal balance. Interest shall be contracted for and collected at the single simple interest rate applied to the outstanding balance that would earn the same amount of interest as the above rates for payment according to schedule.
- (2) With respect to a loan exceeding seven thousand five hundred dollars (\$7,500), eighteen percent (18%) per annum on the outstanding principal balance.

The provisions of G.S. 53-173.1, G.S. 53-174 and G.S. 53-175(a) and (b) shall not apply to loans made pursuant to this section. The provisions of G.S. 53-173(b), (c) and (d) and G.S. 53-180(b), (c), (d), (e), (f), (g), and (h) shall apply to loans made pursuant to this section.

Any licensee under this Article shall have the right to elect to make loans in accordance with this section by the filing of a written statement to that effect with the Commissioner and on date of such notification begin making loans regulated by this section for the following 12 months. Annually after such election a licensee may elect to make loans in accordance with this section unless the licensee notifies in writing the Commissioner of its intention to terminate such election.

The due date of the first monthly payment shall not be more than 45 days following the disbursement of funds under any such installment loan. A borrower under this section may prepay all or any part of a loan made under this section without penalty. Such election shall be made by the filing of a written statement to that effect by the licensee with the Commissioner and can be terminated by cancellation notice filed by the licensee in writing with the Commissioner.

No individual, partnership, or corporate licensee and no corporation which is the parent, subsidiary or affiliate of a corporate licensee which is making loans under this Article otherwise than as authorized specially in this section, shall be permitted to make loans under the provisions of this section. Any corporate licensee or individual or partnership licensee making an election to make loans in accordance with the provisions of this section shall respectively be bound by such election with respect to all of its offices and locations in this State and all offices and locations in this State of its parent, subsidiary or affiliated corporate licensee, or with respect to all of his or their offices and locations in this State. (1961, c. 1053, s. 1; 1969, c. 1303, s. 12.1; 1981, c. 561, s. 7; 1983, c. 126, ss. 14, 15.)

**Editor's Note.** — Session Laws 1981, c. 561, s. 9, as amended by Session Laws 1983, c. 68, s. 1, provides: "Sec. 9. This act shall become effective 30 days after ratification and shall apply only to loans made after the effective date of this act." The 1981 act was ratified June 12, 1981.

**Effect of Amendments.** —

The 1983 amendment, effective 60 days after ratification, in the first paragraph substituted "ten thousand dollars (\$10,000)" for "five

thousand dollars (\$5,000)" and "84 months" for "60 months", deleted "first" preceding "deeds of trust" and preceding "mortgages", and substituted the phrase "the following actuarial rates:", along with subdivisions (1) and (2) for the language "the rate in effect as announced and published by the Commissioner of Banks pursuant to G.S. 24-1.1(3) and 24-1.2(2a)", inserted the present second paragraph and rewrote the present third paragraph. The act was ratified March 31, 1983.



## § 53-176.1. Motor vehicle lenders.

### CASE NOTES

**Legislative History.** — For consideration of the legislative history of this section and §§ 53-168(c), 53-173, and 53-191 with regard to lenders making loans secured by motor vehicles, see *Barclays American/Credit Co. v. Riddle*, 57 N.C. App. 662, 292 S.E.2d 177, cert.

denied, 306 N.C. 555, 294 S.E.2d 369 (1982).

**This section is not an implied limitation on § 53-173.** *Barclays American/Credit Co. v. Riddle*, 57 N.C. App. 662, 292 S.E.2d 177, cert. denied, 306 N.C. 555, 294 S.E.2d 369 (1982).

## § 53-179. Multiple-office loan limitations.

**Editor's Note.** — Session Laws 1981, c. 561, s. 9, as amended by Session Laws 1983, c. 68, s. 1, provides: "Sec. 9. This act shall become effective 30 days after ratification and shall apply

only to loans made after the effective date of this act." The 1981 act was ratified June 12, 1981.

## § 53-180. Limitations and prohibitions on practices and agreements.

### CASE NOTES

**Section 53-173 does not limit the type of security that a lender may take.** *Barclays American/Credit Co. v. Riddle*, 57 N.C. App. 662, 292 S.E.2d 177, cert. denied, 306 N.C. 555, 294 S.E.2d 369 (1982).

**Only Collateral Not Available Is Real Property.** — The only section of this Article which expressly limits the type of collateral available to a general lender operating under § 53-173 is subsection (f) of this section. *Barclays American/Credit Co. v. Riddle*, 57 N.C. App. 662, 292 S.E.2d 177, cert. denied, 306 N.C. 555, 294 S.E.2d 369 (1982).

**No Legislative Intent to Exclude Motor Vehicles as Security.** — Subsection (f) of this section refers specifically to § 53-173, and it

may be reasonably inferred that had the Legislature intended to prohibit the use of motor vehicles as security for loans made under § 53-173, it would have so stated. *Barclays American/Credit Co. v. Riddle*, 57 N.C. App. 662, 292 S.E.2d 177, cert. denied, 306 N.C. 555, 294 S.E.2d 369 (1982).

**General Lender May Take Interest in Motor Vehicle.** — Under the pertinent statutes, and particularly subsection (f) of this section, a general lender operating under § 53-173 is entitled to secure any loan by taking a security interest in a motor vehicle. *Barclays American/Credit Co. v. Riddle*, 57 N.C. App. 662, 292 S.E.2d 177, cert. denied, 306 N.C. 555, 294 S.E.2d 369 (1982).

## § 53-184. Securing of information; records and reports; allocations of expense.

**Editor's Note.** — Session Laws 1981, c. 561, s. 9, as amended by Session Laws 1983, c. 68, s. 1, provides: "Sec. 9. This act shall become effective 30 days after ratification and shall apply

only to loans made after the effective date of this act." The 1981 act was ratified June 12, 1981.



§ 53-191. Businesses exempted.

CASE NOTES

**Legislative History.** — For consideration of the legislative history of this section and §§ 53-168(c), 53-173, and 53-176.1 with regard to lenders making loans secured by motor vehi-

cles, see *Barclays American/Credit Co. v. Riddle*, 57 N.C. App. 662, 292 S.E.2d 177, cert. denied, 306 N.C. 555, 294 S.E.2d 369 (1982).

## Chapter 54.

### Cooperative Organizations.

#### Article 14A.

##### Formation of Credit Union.

Sec.

54-109.2. Organization procedure.

#### Article 14C.

##### Powers of Credit Union.

54-109.21. General powers.

#### Article 14F.

##### Savings Accounts.

54-109.54. Dividends.

#### Article 14G.

##### Loans.

54-109.65. Purposes, terms and interest rate.

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#### Article 15.

##### Central Associations.

Sec.

54-110. [Recodified.]

#### Article 15A.

##### Corporate Credit Union.

54-110.1. Definition and purposes.

54-110.2. Membership.

54-110.3. Charter and name exclusive.

54-110.4. Organization.

54-110.5. Powers and privileges.

54-110.6. Participation in central system.

54-110.7. Right of set-off; security interest.

54-110.8. Fees.

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54-110.10. Applicability of Article.

## SUBCHAPTER III. CREDIT UNIONS.

### ARTICLE 14A.

#### *Formation of Credit Union.*

### § 54-109.2. Organization procedure.

(b) The subscribers shall execute in duplicate articles of incorporation and agree to the terms thereof, which articles shall state:

- (1) The name, which shall include the words "credit union" and which shall not be the same as that of any other existing credit union in this State, and the location where the proposed credit union is to have its principal place of business;
- (2) That the existence of the credit union shall be perpetual;
- (3) The initial par value of the shares of the credit union.
- (4) The names and addresses of the subscribers to the articles of incorporation, and the value of shares subscribed to by each, which shall be not less than five dollars (\$5.00); and
- (5) That the credit union may exercise such incidental powers as are necessary or requisite to enable it to carry on effectively the business for which it is incorporated, and those powers which are inherent in the credit union as a legal entity.

(1915, c. 115, ss. 2, 9; C.S., ss. 5210, 5211, 5233; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, ss. 1, 4, 19; 1973, c. 199, s. 8; 1975, c. 538, s. 1; 1983, c. 568, s. 1.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1983 amendment, effective July 1, 1983, rewrote subdi-

vision (b)(3), which read, "The par value of the shares of the credit union, which shall be in five dollar (\$5.00) multiples, of not less than five dollars (\$5.00), nor more than twenty-five dollars (\$25.00)."



## ARTICLE 14C.

*Powers of Credit Union.***§ 54-109.21. General powers.**

A credit union may:

- (1) Make contracts;
- (2) Sue and be sued;
- (3) Adopt and use a common seal and alter same;
- (4) Acquire, lease, hold and dispose of property, either in whole or in part, necessary or incidental to its operations;
- (5) At the discretion of the board of directors, require the payment of an entrance fee or annual membership fee, or both, of any person admitted to membership;
- (6) Receive savings from its members in the form of shares, deposits, or special-purpose thrift accounts;
- (7) Lend its funds to its members as hereinafter provided;
- (8) Borrow from any source in accordance with policy established by the board of directors;
- (9) Discount and sell any eligible obligations, subject to rules and regulations prescribed by the Administrator;
- (10) Sell all or substantially all of its assets or purchase all or substantially all of the assets of another financial institution, subject to the approval of the Administrator of Credit Unions;
- (11) Invest surplus funds as provided in Articles 14A to 14L of this Chapter;
- (12) Make deposits in legally chartered banks, savings banks, savings and loan associations, trust companies and central-type credit union organizations;
- (13) Assess charges to members in accordance with the bylaws for failure to meet properly their obligations to the credit union;
- (14) Hold membership in other credit unions organized under Articles 14A to 14L of this Chapter or other acts, and in other associations and organizations composed of credit unions;
- (15) Declare dividends; pay interest on deposits and pay interest refunds to borrowers as provided in Articles 14A to 14L of this Chapter;
- (16) Sell travelers checks and money orders and charge a reasonable fee for such services, provided the instruments are payable at institutions other than a credit union;
- (17) Perform such tasks and missions as are requested by the federal government or this State or any agency or political subdivision thereof, when approved by the board of directors and not inconsistent with Articles 14A to 14L of this Chapter;
- (18) Act as fiscal agent for and receive deposits from the federal government, this State, or any agency or political subdivision thereof;
- (19) Contribute to, support, or participate in any nonprofit service facility whose services will benefit the credit union or its membership subject to such regulations as are prescribed by the Administrator;
- (20) Make donations or contributions to any civic, charitable or community organization as authorized by the board of directors, subject to such regulations as are prescribed by the Administrator;
- (21) Act as a custodian of qualified pension funds if permitted by federal law;
- (22) Purchase or make available insurance for its directors, officers, agents, employees, and members; and



- (23) Facilitate its members' purchase of goods and services in a manner which promotes the purposes of the credit union.
- (24) The board of directors may expel from the corporation any member who has not carried out his engagement with the corporation, or has been convicted of a criminal offense, or neglects or refuses to comply with the provisions of this Article or of the bylaws, or who habitually neglects to pay his debts, or shall become insolvent or bankrupt. The members at a regularly called meeting may expel from the corporation any member who has become intemperate or in any way financially irresponsible; no member shall be expelled until he has been informed in writing of the charges against him and an opportunity has been given him, after reasonable notice, to be heard thereon.
- (25) Engage in activity permitted under this subsection. Notwithstanding any other provision of this Chapter, the Administrator of Credit Unions, subject to the advice and consent of the Credit Union Commission, and upon a finding that action is necessary to preserve and protect the welfare of credit unions and to promote the general economy of the State, may adopt rules allowing State-chartered credit unions to engage in any activity in which they could engage if they were federally chartered credit unions.
- (26) Subject to rules and regulations prescribed by the Administrator, act as trustee or custodian, and may receive reasonable compensation for so acting, under any written trust instrument or custodial agreement created or organized and forming a part of a deferred compensation plan for its members or groups or organization of its members, provided the funds of such plans are invested in savings or deposits of the credit union. All funds held may be commingled for appropriate purpose of investment, but individual records shall be kept by the credit union for each participant and shall show in proper detail all transactions engaged in under authority of this section.

A member may withdraw from a credit union by filing a written notice of his intention to withdraw.

The amounts paid in on shares or deposits by an expelled or withdrawing member, with any dividends credited to his shares and any interest accrued on his deposits to the date of expulsion or withdrawal shall be paid to such member, but in the order of expulsion or withdrawal, and only as funds therefor become available, after deducting any amounts due to the corporation by such member. The member shall have no other or further right in the credit union or to any of its benefits, but such expulsion or withdrawal shall not operate to relieve the member from any remaining liability to the corporation. (1915, c. 115, ss. 5, 16, 17, 23; C.S., ss. 5216-5218, 5231; 1925, c. 73, ss. 3, 10; 1935, c. 87; 1965, c. 956, s. 8; 1975, c. 538, s. 1; 1977, c. 559, s. 5; 1983, c. 568, s. 2.)

**Effect of Amendments.** — The 1983 amendment, effective July 1, 1983, rewrote subdivision (25).

## ARTICLE 14D.

### *Membership.*

#### § 54-109.26. "Membership" defined.

**Legal Periodicals.** — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).



## ARTICLE 14F.

*Savings Accounts.***§ 54-109.54. Dividends.**

The board of directors of any credit union may declare dividends as its bylaws provide. (1915, c. 115, s. 22; C.S., s. 5223; 1925, c. 73, s. 3; 1935, c. 87; 1957, c. 989, s. 3; 1965, c. 956, s. 15; 1969, c. 69, ss. 3, 4; 1973, c. 199, s. 7; 1975, c. 538, s. 1; 1983, c. 568, s. 3.)

**Effect of Amendments.** — The 1983 amendment, effective July 1, 1983, deleted the second sentence of this section, which read "Dividends shall be paid on fully paid shares outstanding at the close of the accounting period, but shares

which become fully paid by the tenth of any month of the period may be entitled to a proportional part of such dividend, calculated from the first day of the month."

## ARTICLE 14G.

*Loans.***§ 54-109.65. Purposes, terms and interest rate.**

A credit union may loan to its members for such purpose and upon such security and terms as the board of directors prescribes at rates of interest not exceeding eighteen percent (18%) annual percentage rate, unless a greater rate not to exceed the annual percentage rate permitted to be charged by federally chartered credit unions, is otherwise approved by the Credit Union Commission. Such action by the Commission will be uniform and apply to all credit unions.

The term "interest," as used in this section, shall not be deemed to include charges made by a credit union for appraisals of real or personal property; attorneys' fees for searching title to real property, preparing notes, deeds of trust, mortgages and closing loans; and recording fees. Rate of interest and terms of repayment shall appear on each note but the corporation may, for the purpose of making loans, discount and negotiate promissory notes and deduct in advance, from the proceeds of such loan, interest at a rate not to exceed the rate herein fixed, which shall be the legal rate for corporations organized under this Article, and such deductions shall be made upon the amount of the loan from the date thereof until the maturity of the final installment, notwithstanding that the principal amount of such loan is required to be repaid in such installments. (1915, c. 115, ss. 19, 20; 1917, c. 232, s. 4; C.S., ss. 5220, 5221; 1925, c. 73, s. 3; 1935, c. 87; 1955, c. 1135, s. 2; 1957, c. 989, s. 2; 1961, c. 1187, s. 1; 1965, c. 956, ss. 1, 12, 13; 1969, c. 69, s. 9; 1973, c. 199, ss. 5, 6; 1975, c. 538, s. 1; 1983, c. 568, s. 4.)

**Effect of Amendments.** — The 1983 amendment, effective July 1, 1983, rewrote the first sentence of the first paragraph, which read "A credit union may loan to its members for such purpose and upon such security and terms as the board of directors prescribe, at rates of

interest not exceeding twelve (12%) annual percentage rate, unless a greater rate not to exceed eighteen (18%) annual percentage rate is otherwise approved by the Credit Union Commission."

**§ 54-109.67. Loan limit.**

No loan shall be made to any member in an aggregate amount in excess of ten percent (10%) of the credit union's unimpaired capital and surplus. In accordance with the bylaws and subject to such rules and regulations as the Administrator may prescribe, the board of directors shall determine and set the maximum unsecured loan limits subject to the limitation contained in the preceding sentence. (1915, c. 115, s. 19; 1917, c. 232, s. 4; C.S., s. 5220; 1925, c. 73, s. 3; 1935, c. 87; 1955, c. 1135, s. 2; 1961, c. 1187, s. 1; 1965, c. 956, ss. 1, 12, 13; 1969, c. 69, s. 9; 1973, c. 199, s. 5; 1975, c. 538, s. 1; 1983, c. 568, s. 5.)

**Effect of Amendments.** — The 1983 amendment, effective July 1, 1983, rewrote this section, which read "No loan shall be made to any member in an aggregate amount in excess of two hundred dollars (\$200.00), or ten percent

(10%) of the credit union's unimpaired capital and surplus, whichever is greater, provided that no unsecured loan shall be greater than five thousand dollars (\$5,000)."

**ARTICLE 14M.***Confidential Information.***§ 54-109.105. What information deemed confidential; disclosure; certain information deemed public; exchange of information.**

**Legal Periodicals.** — For survey of 1981 commercial law, see 60 N.C.L. Rev. 1238 (1982).

**ARTICLE 15.***Central Associations.***§ 54-110: Recodified as §§ 54-110.1 to 54-110.10.**

**Editor's Note.** — This Article was rewritten by Session Laws 1983, c. 470, s. 1, and has been recodified as Article 15A of Chapter 54.

**ARTICLE 15A.***Corporate Credit Union.***§ 54-110.1. Definition and purposes.**

(a) A corporate credit union may be incorporated under this Article and shall be subject to all parts of this Chapter not inconsistent with this Article.

(b) A corporate credit union is a cooperative nonprofit association whose members consist primarily of other credit unions and whose purposes are:

- (1) To accumulate and prudently manage the liquidity of its member credit unions through interlending and investment services;
- (2) To act as an intermediary for credit union funds between members and other corporate credit unions;



- (3) To obtain liquid funds from other credit union organizations, financial intermediaries, and other sources;
- (4) To foster and promote in cooperation with other state, regional, and national corporate credit unions and credit union organizations or associations the economic security, growth and development of member credit unions; and
- (5) To perform such other financial services of benefit to its members which are authorized by the Administrator of Credit Unions. (1983, c. 470.)

**Editor's Note.** — This Article is Article 15 of Chapter 54, as rewritten by Session Laws 1983, c. 470, s. 1.

Session Laws 1983, c. 470, s. 2, makes this Article effective upon ratification. The act was ratified June 8, 1983.

### § 54-110.2. Membership.

(a) Membership in the corporate credit union shall be institutional and be limited to the subscribers to the articles of incorporation, credit unions organized under Chapter 54 of the General Statutes, the Federal Credit Union Act or any other credit union act, organizations or associations of credit unions, and such other persons or organizations provided for in the articles of incorporation unless the bylaws otherwise prescribe.

(b) The board of directors of each credit union, organization or association becoming a member of the corporate credit union shall designate one person to be a voting representative in the corporate credit union. Such voting representatives shall be eligible to hold office in the corporate credit union as if such person were himself a member of the corporate credit union. (1983, c. 470.)

### § 54-110.3. Charter and name exclusive.

Only one corporate credit union shall be incorporated under this Article; and no other credit union may use the term "corporate credit union" as a part of its name. (1983, c. 470.)

### § 54-110.4. Organization.

(a) Application to form a corporate credit union shall be made in writing to the Administrator of Credit Unions. The application shall contain the names of at least 15 credit unions which have agreed to subscribe to shares in the corporate credit union at the time the application is made.

(b) The application shall be accompanied by articles of incorporation, bylaws, and articles of association or other appropriate documents.

(c) The bylaws shall provide for the selection of a board of directors of a least five members and shall require credit unions applying for membership to subscribe to shares in a minimum amount as specified in the bylaws. (1983, c. 470.)

### § 54-110.5. Powers and privileges.

(a) A corporate credit union shall enjoy the powers and privileges of any other credit union incorporated under Chapter 54 of the General Statutes in addition to those powers enumerated in this Article, notwithstanding any limitations or restrictions found elsewhere in this Article.

(b) A corporate credit union may:

- (1) Accept shares or deposits in any form from its members, other state, regional or national corporate credit unions, and credit union organizations or associations;



- (2) Make loans to its members and other credit unions and other State, regional or national corporate credit unions, organizations and associations of credit unions;
- (3) Establish lines of credit for members and participate with other credit unions in making loans to its members under the terms and conditions determined by the board of directors;
- (4) Invest in the shares of or make deposits in credit unions;
- (5) Buy and sell any form of marketable debt obligations of domestic or foreign corporations or of federal, state or local government units;
- (6) Borrow from any source without limitation, accept demand deposits from any source and issue notes or debentures;
- (7) Acquire or sell the assets and assume the liabilities of a member; and
- (8) Enter into agreements with credit unions to discount or purchase loans made pursuant to government-guaranteed loan programs, real estate loans made by members or any obligations of the United States or any agency thereof held by members.

(c) A corporate credit union shall not be taxable under any law which shall exempt any other credit union.

(d) The board of directors shall meet at least quarterly and shall have the general direction and control of the affairs of the corporation.

(e) The corporate credit union may exercise such incidental powers or privileges conferred upon a federal corporate credit union. (1983, c. 470.)

#### **§ 54-110.6. Participation in central system.**

The corporate credit union may enter into agreements for the purpose of participation in any state or federal central liquidity facility or central financial system for credit unions, and for the purpose of aiding credit unions in establishing concentrated lines of credit with other financial institutions and act as a depositor and transmitter of funds to carry out such agreements. (1983, c. 470.)

#### **§ 54-110.7. Right of set-off; security interest.**

(a) The corporate credit union shall have a right of immediate set-off against the balances of the share and deposit accounts of each member for any amounts due from the member to the corporate credit union.

(b) The corporate credit union shall have a lien on all share and deposit accounts of each member in the amount of the total indebtedness of the member to the corporate credit union. The lien created herein shall attach to such accounts and be effective whenever the member is indebted to the corporate credit union. The lien shall have priority over any interests of all members and unsecured creditors of the member credit unions of the corporate credit union.

(c) The board of directors or credit committee may require and accept additional security for loans to a member in the form of a pledge, assignment, hypothecation or mortgage of any assets of the member or a guarantor. (1983, c. 470.)

#### **§ 54-110.8. Fees.**

The operating fees established by the Administrator of Credit Unions shall make allowances for the special purposes and operations of a corporate credit union. (1983, c. 470.)



### § 54-110.9. Reserves.

A corporate credit union shall be exempt from the regular reserve requirements of Article 14J, but shall be required to establish and maintain an equity reserve to meet losses, in accordance with regulations prescribed by the Administrator of Credit Unions. (1983, c. 470.)

### § 54-110.10. Applicability of Article.

Nothing in this Article shall be construed as affecting the status of a central association formed prior to the enactment of this Article pursuant to former G.S. 54-110. For the purposes of this Article, the corporate credit union authorized by G.S. 54-110.3 shall be the central association in existence on June 8, 1983. (1983, c. 470.)

## Chapter 54B.

### Savings and Loan Associations.

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## ARTICLE 1.

### General Provisions.

#### § 54B-1. Title.

##### Legal Periodicals. —

For survey of 1981 commercial law, see 60 N.C.L. Rev. 1238 (1982).



**§ 54B-4. Definitions and application of terms.**

- (b) As used in this Chapter, unless the context otherwise requires, the term:
- (1) "Administrator" means the Administrator of the Savings and Loan Division.
  - (2) "Aggregate withdrawal value of withdrawable accounts" means the total value of all withdrawable accounts held by an association.
  - (3) "Application" means the completed package of the application to organize a State association, establish a branch office or conversion of structure of a savings and loan association which the Administrator considers in making his recommendation.
  - (4) "Associate" when used to indicate a relationship with any person, means (i) any corporation or organization (other than the applicant or a majority-owned subsidiary of the applicant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of ten percent (10%) or more of any class of equity securities, (ii) any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, and (iii) any relative or spouse who lives in the same house as that person, or any relative of that person's spouse who lives in the same house as that person, or who is a director or officer of the applicant or any of its parents or subsidiaries.
  - (5) "Association" includes a State association or a federal association unless limited by use of the words "State" or "federal."
  - (6) "Borrowers" means those who borrow funds from or in any other way become obligated on a loan to an association.
  - (7) "Branch office" means an office of an association other than its principal office which renders savings and loan services.
  - (8) "Capital stock" means securities which represent ownership of a stock association.
  - (9) "Certificate of approval" means a document signed by the Administrator informing the North Carolina Secretary of State that the Commission has approved the certificate of incorporation of a proposed association.
  - (10) "Certificate of authority to enter" means the document issued by the Administrator to permit a foreign association to conduct business in this State.
  - (11) "Certificate of incorporation or charter" means the document which represents the corporate existence of a State association.
  - (12) "Certified copy" means a copy of an original document or paper which has been signed by the person or persons who certify such document to be an exact copy of the original.
  - (13) "This Chapter" means Chapter 54B of the North Carolina General Statutes.
  - (14) "Commission" means the North Carolina Savings and Loan Commission of the Department of Commerce.
  - (15) "Conflict of interest" means a matter before the board of directors in which one or more of the directors, officers or employees has a direct or indirect financial interest in its outcome.
  - (16) "Conformed copies" means photocopies or carbon copies or other mechanical reproductions of an original document or paper.
  - (17) "Court of competent jurisdiction" means a court in North Carolina which is qualified to hear the case at hand.
  - (18) "Disinterested directors" means those directors who have absolutely no direct or indirect financial interest in the matter before them.
  - (19) "Dividends on stock" means the earnings of an association paid out to holders of capital stock in a stock association.



- (20) "Dividends on withdrawable accounts" means the consideration paid by an association to a holder of a withdrawable account for the use of his money.
- (21) "Division" means the Savings and Loan Division of the North Carolina Department of Commerce.
- (22) "Entrance fee per with withdrawable account" means the amount to be paid by each person, firm or corporation when he or it pledges to a proposed mutual association to deposit funds in a withdrawable account.
- (23) "Examination and investigation" means a supervisory inspection of an association or proposed association which may include inspection of every relevant piece of information including subsidiary or affiliated businesses.
- (24) "Federal association" means a corporation or association organized and operated under the provisions of federal law and regulation to conduct a savings and loan business.
- (25) "Financial institution" means a person, firm or corporation engaged in the business of receiving, soliciting or accepting money or its equivalent on deposit and/or lending money or its equivalent.
- (26) "Foreign association" means a corporation or association organized in another state to conduct a savings and loan business and is so like a State association that it may, after qualifying, be certified to conduct the savings and loan business in this State.
- (27) "General reserve" means appropriated or restricted funds in the form of cash or investments to be used solely for the purpose of absorbing losses.
- (28) "Guaranty association" means a mutual deposit guaranty association which is a corporation organized under this Chapter or its predecessor and operated under the provisions of Article 12 of this Chapter.
- (29) "Immediate family" means one's spouse, father, mother, children, brothers, sisters, and grandchildren; and the father, mother, brothers, and sisters of one's spouse; and the spouse of one's child, brother or sister.
- (30) "Initial pledges for withdrawable accounts" means those pledges of funds by persons who promise to a proposed mutual association to deposit such amount if and when such proposed association becomes established.
- (31) "Insurance of withdrawable accounts" means insurance on an association's withdrawable accounts when the beneficiary is the holder of such insured account.
- (32) "Liquidity fund" means that portion of the assets of an association which is required to be held in readily marketable form.
- (33) "Members" means withdrawable account holders and borrowers in a State mutual association.
- (34) "Minimum amount of consideration" means the amount of money a stock association shall be required to have received on the sale of its stock, before it shall commence business.
- (35) "Minimum amount on deposit in withdrawable accounts" means the amount of money which a mutual association must have on hand prior to its commencement of business.
- (36) "Mutual association" means all mutual savings and loan associations owned by members of the association, and organized under the provisions of this Chapter or its predecessor for the primary purpose of promoting thrift and home financing.
- (37) "Net withdrawal value of withdrawable accounts" means the aggregate of the withdrawal value of an association's withdrawable accounts less the amount of any pledged withdrawable account which serves as security for a loan.



- (38) "Net worth" means an association's total assets less total liabilities.
- (39) "Original incorporators" means the organizers of a State association responsible for the business of a proposed association from the filing of the application to the Commission's final decision on such application.
- (40) "Plan of conversion" means a detailed outline of the procedure of the conversion of an association from one to another regulatory authority or from one to another form of ownership.
- (41) "Principal office" means the office which houses the headquarters of an association.
- (42) "Proposed association" means an entity in organizational procedures prior to the Commission's final decision on its charter application.
- (43) "Registered agent" means the person named in the certificate of incorporation upon whom service of legal process shall be deemed binding upon the association.
- (44) "Rules and regulations" means those regulatory procedures and guidelines issued by the Administrator and approved by the Commission.
- (45) "Service corporation" means a corporation operating under the provision of Article 8 of this Chapter which engages in activities determined by the Administrator by rules and regulations to be incidental to the conduct of a savings and loan business as provided in this Chapter or activities which further or facilitate the corporate purposes of an association, or which furnishes services to an association or subsidiaries of an association, the voting stock of which is owned directly or indirectly by one or more associations.
- (46) "Specific reserve account" means an account held by an association as a loss reserve for coverage on specific loans and investments.
- (47) "This State" means the State of North Carolina.
- (48) "State association" means a corporation or association organized under this Chapter or its predecessor and operated under the provisions of this Chapter to conduct the savings and loan business; or a corporation organized under the provisions of the predecessors to this Chapter and operated under the provisions of this Chapter; or a corporation organized under the provisions of federal law and so converted as to be operated under the provisions of this Chapter.
- (49) "Stock association" means any corporation or company owned by holders of capital stock and organized under the provisions of this Chapter for the primary purpose of promoting thrift and home financing.
- (50) "Subscriptions" means the promise to purchase capital stock in a stock association and payment of a portion of the selling price.
- (51) "Total assets" means the aggregate amount of assets of any and every kind held by an association.
- (52) "Voluntary dissolution" means the dissolution and liquidation of an association initiated by its ownership.
- (53) "Withdrawable accounts" means accounts in which a customer or member places funds with an association which may be withdrawn by the account holder.
- (54) "Withdrawable application" means the request in writing by a withdrawable account holder to withdraw part or all of his balance. (1981, c. 282, s. 3; 1981 (Reg. Sess., 1982), c. 1238, s. 1; 1983, c. 144, ss. 1, 2.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** —

The 1983 amendment, effective April 6, 1983, rewrote clause (iii) of subdivision (b)(4), which



formerly read, "(iii) that person's spouse, father, mother, children, brothers, sisters, and grandchildren; the father, mother, brothers, and sisters of that person's spouse; and the spouse of that person's child, brother or sister,"

and rewrote subdivision (b)(33), which formerly read, "'Members' means those persons who hold withdrawable accounts or are borrowers from a mutual association and are deemed the owners of the association."

## ARTICLE 2.

### *Incorporation and Organization.*

#### **§ 54B-10. Certificate of incorporation.**

(c) The certificate of incorporation, whether for a mutual association or stock association, shall be signed by the original incorporators, or a majority of them, but not less than 10, and shall be acknowledged before an officer duly authorized under the law of this State to take proof or acknowledgement of deeds, and shall be filed along with two conformed copies in the office of the Administrator as provided in G.S. 54B-9. (1981, c. 282, s. 3; 1983, c. 144, s. 3.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1983 amendment, effective April 6, 1983, substituted "G.S.

54B-9" for "G.S. 54B-8" at the end of subsection (c). The reference to § 54B-9 in subsection (c) of this section in the bound volume was a typographical error.

#### **§ 54B-11. Administrator to consider application.**

Upon receipt of an application to organize and establish a savings and loan association, the Administrator shall examine or cause to be examined all the relevant facts connected with the formation of the proposed association. If it appears to the Administrator that the proposed association has complied with all the requirements set forth in this Chapter and the rules and regulations for the formation of a savings and loan association and is otherwise lawfully entitled to be organized and established as a savings and loan association, the Administrator shall present the application to the Commission for its consideration. (1981, c. 282, s. 3; 1983, c. 144, s. 4.)

**Effect of Amendments.** — The 1983 amendment, effective April 6, 1983, rewrote this section.

#### **§ 54B-12. Criteria to be met before the Administrator may recommend approval of an application.**

(b) The Administrator may recommend approval of an application to form a stock association only when all of the following criteria are met:

- (1) The proposed association has subscriptions for capital stock in an amount determined by the Administrator to be sufficient for the safe and proper operation of the association, but in no event less than one million five hundred thousand dollars (\$1,500,000).
- (2) The proposed association has certified that it shall set aside from the amount of subscriptions for capital stock required by subdivision (1) of this subsection, as a permanent capital reserve, an amount of funds determined by the Administrator to be sufficient for the safe and proper operation of the association, but in no event less than five hundred thousand dollars (\$500,000).



- (3) All subscriptions for capital stock of the proposed association have been purchased with legal tender of the United States.
- (4) to (7). Repealed by Session Laws 1983, c. 144, s. 5, effective April 6, 1983.
- (8) The name of the proposed association will not mislead the public and is not the same as an existing association or so similar to the name of an existing association as to mislead the public; and contains the wording "corporation," "incorporated," "limited," or "company," an abbreviation of one of such words or other words sufficient to distinguish stock associations from mutual associations.
- (9) The character, general fitness, and responsibility of the incorporators, initial board of directors and initial stockholders of the proposed association who shall be residents of North Carolina are such as to command the confidence of the community in which the proposed association intends to locate.
- (10) There is a reasonable demand and necessity in the community which will be served by the establishment of the proposed association.
- (11) The public convenience and advantage will be served by the establishment of the proposed association.
- (12) The proposed association will have a reasonable probability of sustaining profitable and beneficial operations in the community.
- (13) The proposed association, if established, will promote healthy and effective competition in the community in the delivery to the public of savings and loan services. (1981, c. 282, s. 3; 1983, c. 144, s. 5.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1983 amendment, effective April 6, 1983, deleted subdivisions (4), (5), (6) and (7) of subsection (b).

## § 54B-14. Grounds for approval or denial of application.

(a) After consideration of the findings and recommendation of the Administrator and his oral testimony, if any, and the consideration of such other information and evidence, either written or oral, as has come before it at the public hearing, the Commission shall approve or disapprove the application within 30 days after the public hearing. The Commission shall approve the application if it finds that the certificate of incorporation is in compliance with the provisions of G.S. 54B-10, that all the criteria set out in G.S. 54B-12 have been complied with, and that all other applicable provisions of this Chapter, rules and regulations, and the General Statutes have been complied with.

(1981, c. 282, s. 3; 1983, c. 144, s. 9.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1983 amendment, effective April 6, 1983, inserted "rules and regulations" in the second sentence of subsection (a).

**Effect of Amendments.** — The 1983 amend-

## § 54B-21. List of stockholders to be maintained.

Every stock association organized and operated under the provisions of this Chapter or its predecessor shall at all times cause to be kept an up-to-date list of the names of all its stockholders. Whenever called upon by the Administrator, a stock association shall file in the office of the Administrator a correct list of all its stockholders, the resident address of each, the number of shares of stock held by each, and the dates of issue. (1981, c. 282, s. 3; 1983, c. 144, s. 10.)



**Effect of Amendments.** — The 1983 amendment, effective April 6, 1983, deleted "Annually, in January or" at the beginning of the

second sentence and inserted "a stock association shall" in that sentence.

## § 54B-23. Application to change location of a branch or principal office.

(b) Upon receipt of an application accompanied by the proper application fee, the Administrator shall conduct, or cause to be conducted, an examination and investigation of the facts and circumstances connected with the consideration of the application. After such examination and investigation, the Administrator shall approve or deny the application.

(c) If an application filed under this section is approved by the Administrator and the association fails to change the location of such branch office or principal office within six months after the date of the order approving such application, such approval shall be revoked. Such a six-month period may be extended upon a showing to the satisfaction of the Administrator of good cause. (1981, c. 282, s. 3; 1983, c. 144, s. 11.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1983 amendment, effective April 6, 1983, substituted "the Administrator shall approve or deny the application" for "the Administrator shall make a rec-

ommendation to the Commission on the application at a properly publicized hearing at which other concerned parties may present their views" at the end of the second sentence of subsection (b) and substituted "Administrator" for "Commission" in the first sentence of subsection (c).

## § 54B-25. Branch offices closed.

The board of a State association may discontinue the operation of a branch office upon giving prior written notice to the Administrator, the notice to include the date upon which the branch office shall be closed. (1981, c. 282, s. 3; 1983, c. 144, s. 12.)

**Effect of Amendments.** — The 1983 amendment, effective April 6, 1983, substituted the language beginning "upon giving prior written notice" for "upon 60 days prior written notice to the Administrator," and deleted a former sec-

ond sentence, which read, "The association shall notify the Administrator in writing of the date upon which the branch office shall be closed."

## ARTICLE 3.

### *Fundamental Changes.*

## § 54B-33. Conversion of mutual to stock association.

(c) Upon completion of his examination the Administrator shall report his findings to the Commission. After reviewing the findings of the Administrator and conducting any further appropriate examinations and investigations the Commission may approve and permit the requested conversion if it appears that:

- (1) After conversion the association will be in sound financial condition and will be soundly managed;
- (2) The conversion will not impair the capital of the association nor adversely affect the association's operations;



- (3) The conversion will be fair and equitable to the members of the association and no person whether member, employee or otherwise, will receive any inequitable gain or advantage by reason of the conversion;
  - (4) The savings and loan services provided to the public by the association will not be adversely affected by the conversion;
  - (5) The conversion will be conducted as provided by law and pursuant to a plan approved by the Administrator. The substance of the plan must be approved by a vote of two thirds of the board of directors of the association; and, after lawful notice to the members of the association and full and fair disclosure, the substance of the plan must be approved by a majority of the total votes which members of the association are eligible and entitled to cast. Such a vote by the members may be in person or by special proxy restricted to matters in connection with the conversion;
  - (6) The plan of conversion provides:
    - a. All shares of stock issued in connection with the conversion are offered first to the members of the association;
    - b. All stock shall be offered to members of the association and others in prescribed amounts and otherwise pursuant to a formula and procedure which is fair and equitable and will be fairly disclosed to all interested persons;
    - c. Members to whom stock will be offered and the amounts of stock which will be offered shall be determined as of a date or dates approved by the Administrator;
    - d. A statement as to whether stockholders shall have preemptive rights to acquire additional or treasury shares of the association and any provision limiting or denying said rights;
    - e. At the time of the conversion, acquisition of shares by any person together with any associate or group of persons acting in concert, and by any officer and director, shall be as provided by rules and regulations promulgated by the Administrator.
    - f. Repealed by Session Laws 1983, c. 144, s. 6, effective April 6, 1983.
    - g. The conversion shall not be complete until all stock offered in connection with the conversion has been subscribed.
- (1981, c. 282, s. 3; 1981 (Reg. Sess., 1982), c. 1238, s. 7; 1983, c. 144, s. 6.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** —

The 1983 amendment, effective April 6, 1983, in subdivision (c)(6) rewrote paragraph e, which formerly provided that at the time of the conversion, the number of shares which any

person might acquire with any associate or group should not exceed 5% of the total number of shares offered, and deleted paragraph f, which formerly provided that at the time of the conversion, the total amount of stock acquired by officers and directors should not exceed 25% of the total number of shares issued in connection with the conversion.

## § 54B-35. Merger of like savings and loan associations.

Any two or more mutual associations or any two or more stock associations organized and operating, may merge or consolidate into a single association which may be either one of said merging associations, and the procedure to effect such merger shall be as follows:

- (1) The directors, or a majority of them, of such associations as desire to merge, may, at separate meetings, enter into a written agreement of merger signed by them and under the corporate seals of the respective associations, specifying each association to be merged and the association which is to receive into itself the merging association or associations, and prescribing the terms and conditions of the merger and the



mode of carrying it into effect. Such merger agreement must provide the manner and basis of converting or exchanging the withdrawable accounts in the mutual association or associations so merged for withdrawable accounts of the same or a different class of the receiving association, or of converting or exchanging the stock in the stock association or associations so merged into stock or other securities or obligations of the receiving association. The merger agreement may provide for such other provisions with respect to the merger as appear necessary or desirable, or as the Administrator may require by regulation to enable him to discharge his duties with respect to such merger.

- (3) A special meeting of the members or stockholders of each of the associations shall be held separately upon written notice of not less than 20 days to members or stockholders of each association. The notice shall specify the time, place, and purpose for the calling of the meeting. Notice may be given to members of mutual associations by one or more of the following methods: (i) personal service, (ii) postage prepaid mail to the last address of each member appearing upon the records of the association, or (iii) publication of notice at least once a week for four successive weeks in one or more newspapers published in the county or counties where each association has its principal or a branch office, or in a newspaper published in an adjoining county if none is published in the county. Notice may be given to stockholders by personal service or prepaid mail to the last address of each stockholder appearing upon the records of the association. The Administrator may approve notice to stockholders by publication in the same manner as provided to members of mutual associations. The secretary or other officer of the association shall make proof by affidavit at such meeting of the due service of the notice or call for said meeting.

(1981, c. 282, s. 3; c. 670, s. 1; 1981 (Reg. Sess., 1982), c. 1238, s. 8; 1983, c. 144, s. 13.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** —

The 1983 amendment, effective April 6, 1983,

substituted "must provide" for "may provide" and "merged into stock or other securities or obligations" for "merged for the stock of the same or a different class in the second sentence of subdivision (1)," and rewrote subdivision (3).

## § 54B-43. Stock dividends.

No dividend on stock shall be paid unless the association has the approval of the Administrator. (1981, c. 282, s. 3; 1983, c. 144, s. 7.)

**Effect of Amendments.** — The 1983 amendment, effective April 6, 1983, rewrote this section, which formerly referred to stock ownership and dividends.

## ARTICLE 4.

### *Supervision and Regulation.*

## § 54B-55. Power of Administrator to promulgate rules and regulations; reproduction of records.

(c) Repealed by Session Laws 1983, c. 144, s. 14, effective April 6, 1983. (1981, c. 282, s. 3; 1983, c. 144, s. 14.)



**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1983 amendment, effective April 6, 1983, deleted subsection

(c), which read, "In order to supervise the continuing operation of stock associations, the Administrator shall promulgate rules to ensure the compliance by such associations."

## § 54B-57. Supervision and examination fees.

(a) Every State association, including associations in process of voluntary liquidation or savings and loan holding company, shall pay into the office of the Administrator each July a supervisory fee. Examination fees shall be paid promptly upon an association's receipt of the examination billing. The Administrator, subject to the advice and consent of the Commission, shall, on or before June 1 of each year:

- (1) Determine and fix the scale of supervisory and examination fees to be assessed and collected during the next fiscal year;
- (2) Determine and fix the amount of the fee and set the fee collection schedule for the fees to be assessed to and collected from applicants to defray the cost of processing their charter, branch, merger, conversion, location change, savings and loan holding company acquisition, and name change applications and all fees associated with foreign associations.

(1981, c. 282, s. 3; 1983, c. 144, s. 15.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1983 amend-

ment, effective April 6, 1983, inserted "savings and loan holding company acquisition" in subdivision (a)(2).

## § 54B-77. Certain powers granted to State associations.

(b) To such extent as the Administrator may authorize by regulation or advice in writing, a State association may issue notes, bonds, debentures, or other obligations or securities. (1981, c. 282, s. 3; 1983, c. 144, s. 16.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1983 amendment, effective April 6, 1983, added subsection (b).

## ARTICLE 5.

### *Corporate Administration.*

## § 54B-101. Directors.

(a) The directors of a mutual association shall be elected by the members at an annual meeting, held pursuant to the terms of G.S. 54B-106, for such terms as the bylaws of the association may provide. Voting for directors by withdrawable account holders shall be weighted according to the total amount of withdrawable accounts held by such members, subject to any maximum number of votes per member which an association may choose to prescribe in the bylaws of the association. Such requirements shall be fully prescribed in a detailed manner in the bylaws of the association.

(1981, c. 282, s. 3; 1983, c. 144, s. 17.)



**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1983 amendment, effective April 6, 1983, inserted "by withdrawable account holders," substituted "such

members" for "a member," substituted "any maximum number" for "a maximum number," and inserted "which an association may choose to prescribe in the bylaws of the association", all in the second sentence of subsection (a).

## ARTICLE 7.

### *Loans.*

#### § 54B-150. Manner of making loans.

(a) The board of directors shall establish procedures by which loans are to be considered, approved, and made by the association.

(1981, c. 282, s. 3; 1983, c. 144, s. 18.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1983 amend-

ment, effective April 6, 1983, substituted "The board of directors shall establish" for "The bylaws of an association shall provide for" at the beginning of subsection (a).

#### § 54B-151. Permitted loans.

(j) An association may lend funds on any collateral deemed sufficient by the board of directors to properly secure loans. Loans made solely upon security of collateral consisting of stock or equity securities which are not listed on a national stock exchange or regularly quoted and offered for trade on an over-the-counter market, shall be considered loans without security.

(1981, c. 282, s. 3; 1983, c. 144, s. 19.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1983 amendment, effective April 6, 1983, substituted the second sentence of subsection (j) for a semicolon and the language "however, if the collateral

consists of stock or equity securities of any kind, the stock or securities must be listed on a national stock exchange or regularly quoted and offered for trade on an over-the-counter market" at the end of the present first sentence of subsection (j).

#### § 54B-154. Insider loans.

The Administrator shall promulgate rules and regulations consistent with this section, and as he deems necessary, to govern the making of loans to officers and directors, and their associates, and companies or other business entities controlled by them.

Such loans shall be in the ordinary business of the association, which do not involve more than normal risk of collectibility, or pose other unfavorable features. Such loans shall be made only when approved by a majority of the directors, by resolution upon which no director interested in the loan proceeds may vote, and only upon a full disclosure of the transaction to the board. Full disclosure must include whether the loan is made on substantially the same terms, including interest rate and collateral, as those prevailing at the time for comparable loans to other persons. Departure from the terms of loans made to others must be justified and approved as a part of the resolution. The Admin-



istrator's rules shall clearly state that no officer, director, or their associates, or companies or other business entities controlled by them, shall enjoy an improper advantage with respect to loan transactions beyond those advantages enjoyed by other loan applicants. (1981, c. 282, s. 3; 1983, c. 144, s. 20.)

**Effect of Amendments.** — The 1983 amendment, effective 90 days after ratification, rewrote this section. The act was ratified on April 6, 1983.

## ARTICLE 8.

### *Other Investments.*

#### **§ 54B-195. Any loan or investment permitted for federal associations.**

Subject to such limitations and restrictions as the Administrator may prescribe through rules and regulations, any State association is authorized and permitted to make any loan or investment, or engage in any activity, which may be permitted by the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, and the United States Congress for federal associations whose principal offices are located within this State. Every loan or investment made by a State association prior to the enactment of this Chapter shall for all purposes be considered to have been permitted loans or investments if federal associations were authorized to make such loans or investments at the time they were made by the State association. (1981, c. 282, s. 3; 1983, c. 144, s. 21.)

**Effect of Amendments.** — The 1983 amendment, effective April 6, 1983, inserted "or engage in any activity" in the first sentence.

## ARTICLE 9.

### *Liquidity Fund.*

#### **§ 54B-210. Components of liquidity fund.**

(a) Every State association shall at all times have on hand and unpledged, cash, investments in obligations of the United States government, or the government of the State of North Carolina, or stock in the Federal Home Loan Bank, or deposits in any mutual deposit guaranty association organized or operated pursuant to Article 12 of this Chapter, or investments in the accounts of other associations, or bonds issued by the Federal Home Loan Bank, or Government National Mortgage Association pass-through certificates, or Federal Home Loan Mortgage Corporation pass-through certificates, or funds on deposit in a federal reserve bank or in other bank or banks as may have been approved by a majority of the entire board of directors, in an amount set by the Commission equal to at least four percent (4%) of the net withdrawal value of the association's withdrawable account, or two hundred fifty thousand dollars (\$250,000), whichever is greater, as the liquidity fund and held to assure the liquidity of such association. Such investments and funds on deposit shall be readily marketable and shall not exceed a term of five years.

(b) In addition to those investments set forth in subsection (a), a State association's liquidity fund may also include debt securities which are hedged, subject to options, or redeemable, in the manner allowed to members of the



Federal Home Loan Bank Board, by the board's regulations, as amended from time to time; provided that, limitations upon State associations as to amounts of investments, investments in, or hedged by, a single source, or other limitations upon the investment authority of State associations, shall be as provided by rules promulgated by the Administrator, and not as provided by rules and regulations of the Federal Home Loan Bank Board. (1981, c. 282, s. 3; 1981 (Reg. Sess., 1982), c. 1238, s. 21; 1983, c. 144, s. 22.)

**Effect of Amendments. —**

The 1983 amendment, effective 90 days after ratification, designated the first paragraph of this section as subsection (a), inserted "or

investments in the accounts of other associations" in the first sentence of subsection (a), and added subsection (b). The act was ratified April 6, 1983.

## ARTICLE 12.

### *Mutual Deposit Guaranty Associations.*

#### § 54B-236. Definitions.

The term "institution" as used in this Article shall mean savings and loan associations organized or operated under the provisions of this Chapter, or credit unions organized or operated under the provisions of Article 10, Subchapter III of Chapter 54 of the General Statutes, or any institution that is eligible for insurance by the Federal Savings and Loan Insurance Corporation, the Federal Deposit Insurance Corporation or the National Credit Union Administration. (1981, c. 282, s. 3; 1983, c. 144, s. 23.)

**Editor's Note. —** Article 10 of Chapter 54, referred to in this section, was repealed by Session Laws 1975, c. 538, s. 1. For present provisions as to formation of credit unions, see §§ 54-109.1 to 54-109.6.

**Effect of Amendments. —** The 1983 amendment, effective April 6, 1983, added the language beginning "or any institution that is eligible" at the end of this section.

#### § 54B-237. Organization of a mutual deposit guaranty association.

(b) Articles of incorporation of a guaranty association shall be filed in the office of the Secretary of State. The Secretary of State shall, upon receipt of such articles, transmit a copy of them to the Secretary of Commerce and shall not record them until authorized to do so by the Secretary of Commerce. (1981, c. 282, s. 3; 1983, c. 719, s. 2.)

**Only Part of Section Set Out. —** As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments. —** The 1983 amendment, effective July 11, 1983, substituted "Secretary of Commerce" for "Administrator" in two places in subsection (b).

**Effect of Amendments. —** The 1983 amend-

#### § 54B-238. Examination and certification by Secretary of Commerce.

(a) Upon receipt from the Secretary of State of a copy of the articles of incorporation of a proposed guaranty association, the Secretary of Commerce shall at once examine all the facts connected with the formation of the proposed corporation. If the articles of incorporation are correct in form and substance and the examination shows that such corporation, if formed, would be entitled



to commence the business of a guaranty association, the Secretary of Commerce shall so certify to the Secretary of State.

(b) The Secretary of Commerce may refuse to make such certification if upon examination he has reason to believe the proposed corporation is to be formed for any business other than assuring the liquidity of member institutions and guaranteeing deposits therein, if upon examination he has reason to believe that the character and general fitness of the incorporators are not such as to command the confidence of the general public or if the best interests of the public will not be promoted by its establishment. (1981, c. 282, s. 3; 1983, c. 719, s. 2.)

**Effect of Amendments.** — The 1983 amendment, effective July 11, 1983, substituted "Secretary of Commerce" for "Administrator" in this section.

### § 54B-239. Recordation of articles of incorporation.

Upon receipt of the certification provided for in G.S. 54B-238, the Secretary of State shall record the articles of incorporation of such guaranty association and furnish a certified copy thereof to the incorporators and to the Secretary of Commerce. Upon such recordation, such association shall be deemed a corporation. All papers thereafter filed in the office of the Secretary of State relating to such corporation shall be recorded as provided by law and a certified copy forwarded to the Secretary of Commerce. (1981, c. 282, s. 3; 1983, c. 719, s. 2.)

**Effect of Amendments.** — The 1983 amendment, effective July 11, 1983, substituted "Secretary of Commerce" for "Administrator" in this section.

### § 54B-240. Proposed amendments submitted to Secretary of Commerce.

Any proposed amendments to the articles of incorporation of a mutual deposit guaranty association shall be filed in the office of the Secretary of State, who shall forward a copy thereof to the Secretary of Commerce, and shall not record the amendments until authorized to do so by certification of the Secretary of Commerce. (1981, c. 282, s. 3; 1983, c. 719, s. 2.)

**Effect of Amendments.** — The 1983 amendment, effective July 11, 1983, substituted "Secretary of Commerce" for "Administrator" in this section.

### § 54B-241. Examination and certification of amendments.

(a) Upon receipt from the Secretary of State of a copy of proposed amendments to the articles of incorporation of a mutual deposit guaranty association, the Secretary of Commerce shall at once examine the proposed amendments to determine their effect on the operation of the guaranty association.

(b) In the event the proposed amendments are correct in form and substance and the examination shows that if adopted they would not change the character or principal business of the guaranty association, the Secretary of Commerce shall so certify to the Secretary of State.

(c) The Secretary of Commerce may refuse to make certification if upon examination he has reason to believe that the proposed amendments would change the character of the business of the guaranty association or that the best interests of the public will not be promoted by their adoption. (1981, c. 282, s. 3; 1983, c. 719, s. 2.)



**Effect of Amendments.**—The 1983 amendment, effective July 11, 1983, substituted "Secretary of Commerce" for "Administrator" in this section.

## § 54B-242. Recordation of amendments.

Upon receipt of the certification provided for in G.S. 54B-241, the Secretary of State shall record the amendments to the articles of incorporation and furnish a certified copy thereof to the mutual deposit guaranty association and to the Secretary of Commerce. (1981, c. 282, s. 3; 1983, c. 719, s. 2.)

**Effect of Amendments.**—The 1983 amendment, effective July 11, 1983, substituted "Secretary of Commerce" for "Administrator" at the end of this section.

## § 54B-244. Purposes and powers of mutual deposit guaranty associations.

(b) A mutual deposit guaranty association incorporated in accordance with the provisions of this Article may:

- (1) Lend money to a member institution for the purpose of assuring its liquidity and withdrawable accounts, shares or deposits therein;
- (2) Purchase any assets owned by a member institution for the purpose of assuring its liquidity and withdrawable accounts, shares or deposits therein;
- (3) Invest any of its funds in:
  - a. Bonds or interest-bearing obligations of the United States or for which the faith and credit of the United States are pledged for the payment of principal and interest;
  - b. Bonds or interest-bearing obligations of this State;
  - c. Farm loans issued under the Federal Farm Loan Act and amendments thereto;
  - d. Notes, debentures, and bonds of a federal home loan bank issued under the Federal Home Loan Bank Act and any amendments thereto;
  - e. Bonds or other securities issued under the Home Owners' Loan Act of 1933 and any amendments thereto;
  - f. Securities acceptable to the United States to secure government deposits in national banks;
  - g. Deposits in any financial institution that is subject to examination and supervision by the United States or by this State;
  - h. Bonds or other evidences of indebtedness of counties and municipalities of the State of North Carolina, provided, that said bonds or other evidences of indebtedness of the counties and municipalities shall have a rating by Moody's Investors Services, Inc., of not less than AA, and a rating by the North Carolina Municipal Council, Inc., of not less than 90 points out of 100 points;
  - i. Stock in banking institutions licensed to do business in this State;
  - j. Securities and other investments authorized as liquid investments for any financial institution that is subject to examination and supervision by the United States or by this State;
  - k. Notes, bonds, debentures or securities rated in one of the four highest grades by a nationally recognized investment rating service.
  - l. Stock in banking institutions not licensed to do business in this State provided such investment is made in conjunction with any merger or other fundamental change approved by the Administrator under the provisions of G.S. 54B-44.



- (4) Issue its capital notes or debentures to member institutions, provided the holders of these capital notes or debentures shall not be individually responsible for any debts, contracts, or engagements of the guaranty association issuing the notes or debentures;
- (5) Borrow money;
- (6) Exercise any corporate power or powers not inconsistent with, and which may be necessary or convenient to, the accomplishment of its purposes of assuring liquidity of member institutions and guaranteeing withdrawable accounts, shares or deposits therein;
- (7) Serve as receiver of a member institution;
- (8) Make or cause to be made examinations or audits or member institutions. (1981, c. 282, s. 3; 1983, c. 144, s. 24.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1983 amendment, effective April 6, 1983, added paragraph (1) in subdivision (b)(3).

### § 54B-245. Filing of semiannual financial reports; fees.

Each mutual deposit guaranty association shall on the 30th day of June and the 31st day of December of each year, or within 40 days thereafter, file with the Secretary of Commerce a report for the preceding half year, showing its financial condition at the end thereof. Such reports shall be in such form and contain such information as may be prescribed by the Secretary of Commerce. Each guaranty association doing business in this State shall pay to the Secretary of Commerce, at the time of filing each semiannual report required by this section, the sum of five dollars (\$5.00). All such fees shall be paid into the State treasury to the credit of the general fund. (1981, c. 282, s. 3; 1983, c. 719, s. 2.)

**Effect of Amendments.** — The 1983 amendment, effective July 11, 1983, substituted

"Secretary of Commerce" for "Administrator" in this section.

### § 54B-246. Supervision by Secretary of Commerce.

(a) In addition to any and all other powers, duties and functions vested in the Secretary of Commerce under the provisions of this Article, and for the protection of member institutions and the general public, the Secretary of Commerce shall have general control and supervision over all mutual deposit guaranty associations doing business in this State. Mutual deposit guaranty associations shall be subject to the control and supervision of the Secretary of Commerce as to their conduct, organization, management, business practices, reserve requirements and their financial and fiscal matters. The grant of general control and supervision over mutual deposit guaranty associations to the Secretary of Commerce by this Article shall in no way be deemed to affect the existing powers, duties and responsibilities of the Credit Union Commission, the Commissioner of Banks, the State Banking Commission or the North Carolina Savings and Loan Commission except for the removal herein of general control and supervision over mutual deposit guaranty associations from the Administrator of the Savings and Loan Division to the Secretary of Commerce.

(b) The Secretary of Commerce shall have the right, and is hereby empowered to issue rules and regulations whenever he deems it necessary for the administration of this Article as well as rules and regulations with respect to:

- (1) Types of financial records to be maintained by mutual deposit guaranty associations;



- (2) Retention periods of various financial records;
- (3) Internal control procedures of mutual deposit guaranty associations;
- (4) Conduct and management of mutual deposit guaranty associations;
- (5) Additional reports which may be required by the Secretary of Commerce.

It shall be the duty of the board of directors or board of trustees of the mutual deposit guaranty association to put into effect and to carry out such rules and regulations.

(c) At least once each year the Secretary of Commerce shall make or cause to be made an examination into the affairs of each mutual deposit guaranty association doing business in this State. The Administrator of the Credit Union Division of this State, in his capacity as supervisor of state-chartered credit unions, if he deems it necessary, may designate agents to participate in such examination. The Administrator, in his capacity as supervisor of State chartered savings and loan associations, may designate agents to participate in such examination. The expenses of such yearly examination shall be paid by the mutual deposit guaranty association so examined. (1981, c. 282, s. 3; 1983, c. 719, s. 2.)

**Effect of Amendments.** — The 1983 amendment, effective July 11, 1983, rewrote the last sentence of subsection (a), which read "Such control and supervision is subject to the provisions of G.S. 54B-53(g)" and inserted the

present third sentence of subsection (c). The amendment also substituted "Secretary of Commerce" for "Administrator" in several places in subsections (a), (b) and (c).

## § 54B-247. Special examinations.

Whenever the Secretary of Commerce deems it necessary, he may make or cause to be made a special examination or audit of any mutual deposit guaranty association doing business in this State, in addition to the regular examination provided for by this Article. The expenses of such a special examination or audit shall be paid by the mutual deposit guaranty association so examined. (1981, c. 282, s. 3; 1983, c. 719, s. 2.)

**Effect of Amendments.** — The 1983 amendment, effective July 11, 1983, substituted

"Secretary of Commerce" for "Administrator" in the first sentence.

## § 54B-248. Right to enter and to conduct investigations.

The Secretary of Commerce or any examiner appointed by him shall have access to and may compel the production of all books, papers, securities, moneys, and other property of a mutual deposit guaranty association under examination by him. He may administer oaths to and examine the officers and agents of such association as to its affairs. (1981, c. 282, s. 3; 1983, c. 719, s. 2.)

**Effect of Amendments.** — The 1983 amendment, effective July 11, 1983, substituted

"Secretary of Commerce" for "Administrator" in the first sentence.

## § 54B-249. Removal of officers or employees.

The Secretary of Commerce shall have the right, and is hereby empowered, to require the board of directors or board of trustees of any guaranty association to immediately remove from office any officer, director, trustee or employee of any mutual deposit guaranty association doing business in this State, who shall be found by the Secretary of Commerce to be dishonest, incompetent, or



reckless in the management of the affairs of the mutual deposit guaranty association, or in violation of the lawful orders, rules and regulations issued by the Secretary of Commerce, or who violates any of the laws set forth in Chapter 54B of the General Statutes. (1981, c. 282, s. 3; 1983, c. 719, s. 2.)

**Effect of Amendments.** — The 1983 amendment, effective July 11, 1983, substituted "Secretary of Commerce" for "Administrator" in this section.

## ARTICLE 13.

### *Savings and Loan Holding Companies.*

#### § 54B-261. Savings and loan holding companies.

(b) Repealed by Session Laws 1983, c. 144, s. 8, effective April 6, 1983. (1981, c. 282, s. 3; 1983, c. 144, s. 8.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1983 amendment, effective April 6, 1983, deleted subsection (b), which formerly provided that all limi-

tations or restrictions on the ownership of the stock of a stock association contained in this Chapter should be applicable to the ownership of the stock of a savings and loan holding company which owned shares of stock of a stock association organized pursuant to this Chapter.

## Chapter 55.

### Business Corporation Act.

#### Article 11.

##### Fees and Taxes.

Sec.

55-155. Fees.

55-156. Taxes.

#### ARTICLE 3.

##### *Formation, Name and Registered Office.*

### § 55-15. Service of process on corporation.

#### CASE NOTES

**Continuously Doing Business Constitutes Presence.** — Where the seller has continuously done business in this State since plaintiff's claims accrued, the seller has been sufficiently "present" in the state to warrant the protection of the statutes of limitations. *Bobbitt v. Tannewitz*, 538 F. Supp. 654 (M.D.N.C. 1982).

**Presence through Agents in State.** — A corporation can actually be present in the state by continuously doing business in this State through its agents, even though place of incorporation and principal place of business are in foreign states. *Bobbitt v. Tannewitz*, 538 F. Supp. 654 (M.D.N.C. 1982).

#### ARTICLE 4.

##### *Powers and Management.*

### § 55-29. Informal or irregular action by directors or committees; attendance by telephone.

#### CASE NOTES

**Applied in Onslow Whse. Plumbing & Elec. Supply, Inc. v. Fisher**, 60 N.C. App. 55, 298 S.E.2d 718 (1982).

### § 55-35. Duty of directors and officers to corporation.

#### CASE NOTES

**Directors Are Trustees of Property of Corporation.** — Directors of a corporation are trustees of the property of the corporation for the benefit of the corporate creditors, as well as shareholders. It is their duty to administer the trust assumed by them, not for their own profit, but for the mutual benefit of all parties interested; and, when such directors receive an advantage to themselves not common to all,

they are guilty of a plain breach of trust. *Meiselman v. Meiselman*, 58 N.C. App. 758, 295 S.E.2d 249 (1982).

**Duty Owed to Minority Shareholders.** — Directors, officers, and majority shareholders owe a fiduciary duty and obligation of good faith to minority shareholders as well as to the corporation. *Meiselman v. Meiselman*, 58 N.C. App. 758, 295 S.E.2d 249 (1982).



**Applied** in *Onslow Whsle. Plumbing & Elec. Supply, Inc. v. Fisher*, 60 N.C. App. 55, 298 S.E.2d 718 (1982).

## ARTICLE 5.

### *Corporate Finance.*

## § 55-52. Acquisition by a corporation of its own shares.

### CASE NOTES

**Cited** in *Onslow Whsle. Plumbing & Elec. Supply, Inc. v. Fisher*, 60 N.C. App. 55, 298 S.E.2d 718 (1982).

## ARTICLE 6.

### *Shareholders.*

## § 55-55. Shareholders' derivative actions.

### CASE NOTES

**Cited** in *Lowder v. All Star Mills, Inc.*, — N.C. App. —, 300 S.E.2d 230 (1983).

## ARTICLE 9.

### *Dissolution and Liquidation.*

## § 55-125. Power of courts to liquidate and decree involuntary dissolution.

### CASE NOTES

**For historical background of this section**, see *Meiselman v. Meiselman*, 58 N.C. App. 758, 295 S.E.2d 249 (1982).

**Power of Court to Protect Rights of Complainining Shareholder.** — The confluence of § 55-125.1 and subdivision (a)(4) of this section gives the trial court plenary power to frame whatever order it sees fit to protect the rights of a complaining shareholder. *Meiselman v. Meiselman*, 58 N.C. App. 758, 295 S.E.2d 249 (1982).

**Involuntary dissolution under this section is not the exclusive remedy in this State**, because under § 55-125.1 the court has broad discretion to grant any kind of relief it deems appropriate as an alternative to

dissolving a corporation. *Meiselman v. Meiselman*, 58 N.C. App. 758, 295 S.E.2d 249 (1982).

**Need for Judicial Intervention Determined Case by Case.** — The circumstances which give rise to relief under the involuntary dissolution statutes are so infinitely varied that courts must determine if judicial intervention is necessary on a case by case basis. *Meiselman v. Meiselman*, 58 N.C. App. 758, 295 S.E.2d 249 (1982).

**Shareholder Need Only Show That "Fairness" Compels Dissolution.** — Considering the history and liberal sweep of the Business Corporation Act, subdivision (a)(4) of this section, which authorizes liquidation, not

when there is "oppression," but when it is reasonably necessary for the protection of the complaining shareholder, requires the complaining

shareholder only to show that basic "fairness" compels dissolution. *Meiselman v. Meiselman*, 58 N.C. App. 758, 295 S.E.2d 249 (1982).

## § 55-125.1. Discretion of court to grant relief other than dissolution.

### CASE NOTES

Section was copied from virtually identical provision in South Carolina Business Corporation Act. *Meiselman v. Meiselman*, 58 N.C. App. 758, 295 S.E.2d 249 (1982).

For historical background of this section, see *Meiselman v. Meiselman*, 58 N.C. App. 758, 295 S.E.2d 249 (1982).

**Power of Court to Protect Rights of Complaining Shareholder.** — The confluence of this section and § 55-125(a)(4) gives the trial court plenary power to frame whatever order it sees fit to protect the rights of a complaining shareholder. *Meiselman v. Meiselman*, 58 N.C. App. 758, 295 S.E.2d 249 (1982).

**Involuntary dissolution under § 55-125 is not the exclusive remedy in this State**, because under this section the court has broad discretion to grant any kind of relief it deems appropriate as an alternative to dissolving a corporation. *Meiselman v. Meiselman*, 58 N.C. App. 758, 295 S.E.2d 249 (1982).

**Need for Judicial Intervention Determined Case by Case.** — The circumstances which give rise to relief under the involuntary dissolution statutes are so infinitely varied that courts must determine if judicial intervention is necessary on a case by case basis. *Meiselman v. Meiselman*, 58 N.C. App. 758, 295 S.E.2d 249 (1982).

**Showing Required for Relief under Subsection (b).** — A fortiori, subsection (b) of this section does not require a complaining shareholder to show bad faith, mismanagement or wrongful conduct, but only real harm. *Meiselman v. Meiselman*, 58 N.C. App. 758, 295 S.E.2d 249 (1982).

**It is the trial court's duty to review all the evidence to determine whether fairness and the equities warrant judicial intervention.** *Meiselman v. Meiselman*, 58 N.C. App. 758, 295 S.E.2d 249 (1982).

## ARTICLE 10.

### *Foreign Corporations.*

## § 55-145. Jurisdiction over foreign corporations not transacting business in this State.

### CASE NOTES

#### I. GENERAL CONSIDERATION.

**This section is alternative ground for finding jurisdiction.** — As stated in § 55-146.1, in addition to the provisions set out in this Chapter, foreign corporations may be served with process and subjected to the jurisdiction of the courts of this State pursuant to applicable provisions of Chapters 1 and 1A. *Fiber Indus., Inc. v. Coronet Indus., Inc.*, 59 N.C. App. 677, 298 S.E.2d 76 (1982).

**Due Process Must Not Be Offended.** — As well as having a statutory basis, jurisdiction in the courts of North Carolina must not offend due process in violation of the Fourteenth Amendment to the United States Constitution.

*Styleco, Inc. v. Stoutco, Inc.*, — N.C. App. —, 302 S.E.2d 888 (1983).

**Plaintiff has the initial burden of showing the existence of jurisdiction.** — The burden is met by a prima facie showing that jurisdiction is conferred by the statute. *Styleco, Inc. v. Stoutco, Inc.*, — N.C. App. —, 302 S.E.2d 888 (1983).

**Cited in Southern Case, Inc. v. Management Recruiters Int'l, Inc.**, 544 F. Supp. 403 (E.D.N.C. 1982).

#### II. MINIMUM CONTACTS.

**Service of Abusive Process.** — If an out-of-state defendant causes abusive process to



be served upon an in-state plaintiff, and the plaintiff subsequently sues the defendant in plaintiff's state, the state wherein the alleged abusive process was served, on a cause of action arising out of such abusive service of process, personal jurisdiction exists over the out-of-state defendant. *Vishay Intertechnology, Inc. v. Delta Int'l Corp.*, 696 F.2d 1062 (4th Cir. 1982).

**Jurisdiction Held to Exist.** — In an action to recover a deposit paid pursuant to a manufacturing contract, jurisdiction existed over defendant foreign corporation where plaintiff domestic corporation had contracted with it to manufacture products using components supplied by plaintiff, and it was contemplated that some of the products would be sold in North Carolina. *Styleco, Inc. v. Stoutco, Inc.*, — N.C. App. —, 302 S.E.2d 388 (1983).

**III. CONTRACTS MADE OR PERFORMED IN STATE.**

**Single Contract Is Sufficient.** —  
In accord with 2nd paragraph in original. See

**§ 55-146.1. Alternative jurisdiction over and service of process on foreign corporations.**

**CASE NOTES**

**Applied** in *Fiber Indus., Inc. v. Coronet Indus., Inc.*, 59 N.C. App. 677, 298 S.E.2d 76 (1982).

**ARTICLE 11.**

***Fees and Taxes.***

**§ 55-155. Fees.**

(a) In addition to any taxes prescribed by G.S. 55-156, the Secretary of State shall collect the following fees and remit them to the State Treasurer for the use of the State:

- (1) For filing an application to reserve or register a corporate name and for filing an application to renew such a registration (G.S. 55-12(f) and (h)), . . . . . \$10.00
- (2) For filing a notice of transfer of a reserved corporate name (G.S. 55-12(g)), . . . . . 10.00
- (3) For filing articles of incorporation (G.S. 55-7), . . . . . 10.00
- (4) For filing an application of a foreign corporation for a certificate of authority to transact business in this State and issuing a certificate of authority (G.S. 55-138), . . . . . 10.00
- (5) For filing a statement of classification of shares (G.S. 55-42(e)), . . . . . 10.00
- (6) For filing a statement of the change of a registered office or registered agent, or both, of a domestic or foreign corporation (G.S. 55-14, 55-142, 55-153), . . . . . 5.00



(7) For filing a notice of resignation of a registered agent (G.S. 55-14(d)),	5.00
(8) For filing a notice of resignation of a nonresident director under G.S. 55-33(a),	5.00
(9) For filing a certificate of reduction of capital (G.S. 55-48),	10.00
(10) For filing articles of amendment (G.S. 55-103),	10.00
(11) For filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this State (G.S. 55-147),	10.00
(12) For filing a restated charter (G.S. 55-105),	10.00
(13) For filing an application of a foreign corporation for an amended certificate of authority to transact business in this State and issuing an amended certificate of authority (G.S. 55-149),	10.00
(14) For filing articles of merger or consolidation (G.S. 55-109),	10.00
(15) Repealed by Session Laws 1969, c. 751, s. 45.	
(16) For filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this State (G.S. 55-148),	10.00
(17) For filing a statement setting forth the name and address in this State of the registered agent of a foreign corporation not transacting business in this State (G.S. 55-145),	10.00
(18) For receiving any service of process as statutory agent either of a corporation or of a director of a corporation (G.S. 55-15(b), 55-33(d), 55-146),	5.00
which amount may be recovered from the adverse party as taxable costs by the party to the action or proceeding causing such service to be made if such party prevails in the action or proceeding.	
(19) Repealed by Session Laws 1983, c. 713, s. 37, effective August 1, 1983.	
(20) Repealed by Session Laws 1969, c. 751, s. 45.	
(21) For filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal (G.S. 55-150),	10.00
(22) For filing articles of voluntary dissolution by directors (G.S. 55-116),	5.00
(23) For filing articles of voluntary dissolution by written consent of shareholders (G.S. 55-117),	5.00
(24) For filing articles of voluntary dissolution by action of directors and stockholders (G.S. 55-118),	5.00
(25) For filing a statement of revocation of dissolution (G.S. 55-120),	5.00
(26) For filing a certificate of completed liquidation (G.S. 55-121),	5.00
(27) For preparing and furnishing a copy of any document, instrument or paper filed or recorded relating to a corporation (G.S. 55-4(c)):	
For the first page thereof,	1.00
For each additional page,	.40
For affixing his certificate and official seal thereto,	2.00
(28) For comparing a copy furnished to him of any document, instrument or paper filed or recorded relating to a corporation:	
For each page,	.20
For affixing his certificate and official seal thereto,	2.00
(29) For filing any other document not herein specifically provided for,	10.00

(1957, c. 1180; 1967, c. 823, s. 20; 1969, c. 751, ss. 43, 45; c. 797, s. 4; 1975, 2nd Sess., c. 981, s. 1; 1983, c. 713, ss. 32-35, 37.)



**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1983 amendment, effective Aug. 1, 1983, in subsection (a) substituted "\$10.00" for "\$5.00" in subdivisions (1), (2), (3), (4), (5), (9), (10), (11), (12), (13), (14), (16), (17), (21), and (29), substituted "\$5.00" for

"\$3.00" in subdivisions (6) and (18), substituted "\$5.00" for "\$2.00" in subdivisions (25) and (26), and substituted "\$5.00" for "\$1.00" in subdivisions (7) and (8), and deleted subdivision (19), which read, "For issuing a certificate of revocation of authority of a foreign corporation (G.S. 55-152), . . . 5.00."

## § 55-156. Taxes.

(a) In addition to any fees prescribed by G.S. 55-155, on filing any of the following certificates or papers relative to corporations in the office of the Secretary of State, the following taxes shall be collected by the Secretary of State, and remitted to the State Treasurer for the use of the State:

(1) Articles of incorporation:

For each \$1,000 of the total amount of capital stock authorized, \$	.80
but in no case less than	80.00
nor more than	1,000

(2) Articles of amendment which include an authorization to increase capital stock:

For each \$1,000 of the total increase authorized,	.80
but in no case less than	80.00
nor more than	1,000

(3) Articles of amendment which do not include an authorization to increase capital stock

15.00

(4) Articles of dissolution

20.00

(5) Application by foreign corporation for certificate of authority to transact business in this State:

For each \$1,000 of its authorized capital stock,	.80
but in no case less than	80.00
nor more than	1,000

(6) Articles of merger or consolidation which increase the authorized capital stock which the surviving or new corporation, domestic or foreign, will have authority to issue above the aggregate authorized capital stock which the constituent domestic corporations and constituent foreign corporations authorized to transact business in this State had authority to issue:

For each \$1,000 of the total amount of such increase	.80
but in no case less than	80.00
nor more than	1,000

(7) Articles of merger or consolidation which do not increase the authorized capital stock which the surviving or new corporation, domestic or foreign, will have authority to issue above the aggregate authorized capital stock which the constituent domestic corporations and constituent foreign corporations authorized to transact business in this State had authority to issue,

40.00

(1957, c. 1180; 1969, c. 751, s. 42; c. 797, s. 5; 1983, c. 713, ss. 36, 38.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1983 amendment, effective Aug. 1, 1983, substituted "\$.80" for "\$.40" in subdivisions (a)(1), (a)(2), (a)(5),

and (a)(6), substituted "\$80.00" for "\$40.00" in subdivisions (a)(1), (a)(2), (a)(5), and (a)(6), substituted "\$1,000" for "\$500.00" in subdivision (a)(5), substituted "\$15.00" for "\$40.00" in subdivision (a)(3) and substituted "\$20.00" for "\$5.00" in subdivision (a)(4).



## Chapter 55A.

### Nonprofit Corporation Act.

#### Article 9.

#### Fees and Taxes.

Sec.

55A-77. Fees.

55A-78. Taxes.

#### ARTICLE 9.

#### *Fees and Taxes.*

#### § 55A-77. Fees.

(a) The Secretary of State shall collect the following fees and remit them to the State Treasurer for the use of the State:

- (1) For filing articles of incorporation (G.S. 55A-7), . . . . . \$ 10.00
- (2) For filing an application of a foreign corporation for a certificate of authority to conduct affairs in this State and issuing a certificate of authority (G.S. 55A-61), . . . . . 10.00
- (3) For filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this State and issuing an amended certificate of authority (G.S. 55A-71), . . . . . 10.00
- (4) For filing articles of amendment (G.S. 55A-36), . . . . . 10.00
- (5) For filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in this State (G.S. 55A-69), . . . . . 10.00
- (6) For filing articles of merger or consolidation (G.S. 55A-41), . . . . . 10.00
- (7) For filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in this State (G.S. 55A-70), . . . . . 10.00
- (8) For receiving any service of process as statutory agent of a corporation (G.S. 55A-13, 55A-68, 55A-75), . . . . . 5.00  
which amount may be recovered from the adverse party as taxable costs by the party to the action or proceeding causing such service to be made if such party prevails in the action or proceeding.
- (9) For filing a notice of resignation of a registered agent (G.S. 55A-12(d)), . . . . . 5.00
- (10) For filing a statement of the change of registered office or registered agent of a domestic or foreign corporation (G.S. 55A-65, 55A-75, 55A-12), . . . . . 5.00
- (11) For filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal (G.S. 55A-72), . . . . . 10.00
- (12) Repealed by Session Laws 1983, c. 713, s. 42, effective August 1, 1983.
- (13) For filing articles of dissolution (G.S. 55A-48), . . . . . 10.00
- (14) For preparing and furnishing a copy of any document, instrument or paper filed or recorded relating to a corporation (G.S. 55A-4(c)):  
for the first page thereof, . . . . . 1.00  
for each additional page, . . . . . .40  
for affixing his certificate and official seal thereto, . . . . . 2.00

- (15) For comparing a copy furnished to him of any document, instrument or paper filed or recorded relating to a corporation:  
for each page, . . . . . \$ .20  
for affixing his certificate and official seal thereto, . . . . . 2.00
  - (16) For filing an application to reserve or register a corporate name and for filing an application to renew such a registration (G.S. 55A-10(e) and (f)), . . . . . 10.00
  - (17) For filing any other document not herein specifically provided for, . . . . . 10.00
- (1957, c. 1179; 1967, c. 823, s. 24; 1969, c. 875, s. 10; 1975, 2nd Sess., c. 981, s. 2; 1983, c. 713, ss. 39-42.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1983 amendment, effective Aug. 1, 1983, in subsection (a) substituted "\$10.00" for "\$5.00" in subdivisions (1), (2), (3), (4), (5), (6), (7), (11), (13), (16), and

(17), substituted "\$5.00" for "\$3.00" in subdivisions (8) and (10), substituted "\$5.00" for "\$1.00" in subdivision (9), and deleted subdivision (12), which read "Issuance of a certificate of revocation of authority (G.S. 55A-74), . . . 5.00."

§ 55A-78. Taxes.

(a) On filing articles of incorporation in the office of the Secretary of State, a tax in the amount of thirty dollars (\$30.00) shall be collected by the Secretary of State, and remitted to the State Treasurer for the use of the State.

(b) On filing in the office of the Secretary of State an application of a foreign corporation for a certificate of authority to conduct affairs in this State, a tax in the amount of sixty-five dollars (\$65.00) shall be collected by the Secretary of State and remitted to the State Treasurer for the use of the State. (1957, c. 1179; 1983, c. 713, ss. 43, 44.)

**Effect of Amendments.** — The 1983 amendment, effective Aug. 1, 1983, substituted "thirty dollars (\$30.00)" for "fifteen dollars (\$15.00)" in

subsection (a) and substituted "sixty-five dollars (\$65.00)" for "forty dollars (\$40.00)" in subsection (b).



**Chapter 55B.****Professional Corporation Act.**

Sec.

55B-5. Corporate name.

**§ 55B-5. Corporate name.**

The corporate name used by professional corporations under this Chapter, except as limited by the licensing acts of the respective professions, shall be governed by the provisions of Chapter 55, the Business Corporation Act; provided that professional corporations may use the words "Professional Association," "P.A.," "Professional Corporation," or "P.C." in lieu of the corporate designations specified in Chapter 55; and provided further that licensing boards by regulations may make further corporate name requirements or limitations for the respective professions, but such regulations may not prohibit the continued use of any corporate name duly adopted in conformity with the General Statutes and with the pertinent licensing board regulations in effect at the date of such adoption. (1969, c. 718, s. 5; 1983, c. 22.)

**Effect of Amendments.** — The 1983 amendment, effective February 21, 1983, substituted " 'P.A.', 'Professional Corporation', or 'P.C.' " for "or 'P.A.' " near the middle of the section.

## Chapter 57.

### Hospital, Medical and Dental Service Corporations.

#### Article 1.

##### In General.

Sec.

57-12. Licensing of agents.

#### ARTICLE 1.

##### *In General.*

### § 57-12. Licensing of agents.

Every agent of any hospital service corporation authorized to do business in this State under the provisions of this Chapter shall be required to obtain annually from the Commissioner of Insurance a license under the seal of his office showing that the company for which he is agent is licensed to do business in this State and that he is an agent of such company and duly authorized to do business for it. And every such agent, on demand, shall exhibit his license to any officer or to any person from whom he shall solicit hospital service. For said license, each agent shall annually pay the sum of two dollars (\$2.00). Before a license is issued to an agent, hereunder, the agent and the company for which he desires to act, shall apply for the license on forms to be prescribed by the Commissioner of Insurance, and before he issues a license to such agent, the Commissioner of Insurance shall satisfy himself by examination, or otherwise, that the person applying for a license as an agent is a person of good moral character, that he intends to hold himself out in good faith as a hospital and/or medical and/or dental service agent and has sufficient knowledge of the business proposed to be done; that he has not willfully violated any of the insurance laws of the State, and that he is a proper person for such position, and that such license, if issued, shall serve the public's interest. For said examination applicant shall pay the sum of ten dollars (\$10.00). All agents operating as such for a corporation subject to the provisions of this Chapter on the date of its ratification are deemed qualified to act as such without the examination herein provided for. Licenses issued hereunder shall be subject to revocation by the Commissioner of Insurance for cause after notice and hearing and if any person shall assume to act as an agent or broker without obtaining the license herein provided for, or makes any false statements or representations concerning the said hospital and/or medical and/or dental service, knowingly or willfully, he shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for each offense. (1941, c. 338, s. 12; 1943, c. 537, s. 7; 1947, c. 1023, s. 1; 1961, c. 1149; 1971, c. 1080, s. 2; 1983, c. 790, s. 5.)

**Effect of Amendments.** — The 1983 amendment, effective July 1, 1983, substituted "two dollars (\$2.00)" for "one dollar (\$1.00)" in the third sentence and deleted the proviso at the

end of the fifth sentence, relating to applicants who have already paid the \$10.00 examination fee prescribed in § 105-228.7.



## Chapter 57B.

### Health Maintenance Organization Act.

Sec.

57B-3. Establishment of health maintenance organizations.

57B-4. Issuance of certificate.

#### § 57B-3. Establishment of health maintenance organizations.

(c) Each application for a certificate of authority shall be verified by an officer or authorized representative of the applicant, shall be in a form prescribed by the Commissioner, and shall be set forth or be accompanied by the following:

- (1) A copy of the basic organizational document, if any, of the applicant such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto;
- (2) A copy of the bylaws, rules and regulations, or similar document, if any, regulating the conduct of the internal affairs of the applicant;
- (3) A list of the names, addresses, and official positions of persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers in the case of a corporation, and the partners or members in the case of a partnership or association;
- (4) A copy of any contract made or to be made between any providers or persons listed in paragraph (3) and the applicant;
- (5) A statement generally describing the health maintenance organization, its health care plan or plans, facilities, and personnel;
- (6) A copy of the form of evidence of coverage to be issued to the enrollees;
- (7) A copy of the form of the group contract, if any, which is to be issued to employers, unions, trustees, or other organizations;
- (8) Financial statements showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent regular certified financial statement shall be deemed to satisfy this requirement unless the Commissioner directs that additional or more recent financial information is required for the proper administration of this Chapter;
- (9) A description of the proposed method of marketing the plan, a financial plan which includes a three-year projection of the initial operating results anticipated, and a statement as to the sources of working capital as well as any other sources of funding. The three-year projection may be prepared by the applicant's staff actuary, a recognized actuarial consultant, or a recognized health care consultant;
- (10) A power of attorney duly executed by such applicant, if not domiciled in this State, appointing the Commissioner and his successors in office, and duly authorized deputies, as the true and lawful attorney of such applicant in and for this State upon whom all lawful process in any legal action or proceeding against the health maintenance organization on a cause of action arising in this State may be served;
- (11) A statement reasonably describing the geographic area or areas to be served;



(12) Such other information as the Commissioner may require to make the determinations required in G.S. 57B-4.

(1977, c. 580, s. 1; 1979, c. 876, s. 1; 1983, c. 386, s. 1.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1983 amendment, effective May 26, 1983, inserted the second sentence of subdivision (c)(9).

## § 57B-4. Issuance of certificate.

(a) Before issuing any such certificate, the Commissioner of Insurance may make such an examination or investigation as he deems expedient. The Commissioner of Insurance shall issue a certificate of authority upon the payment of the application fee prescribed in G.S. 57B-20 and upon being satisfied on the following points:

- (1) The applicant is established as a bona fide health maintenance organization as defined by this Chapter;
- (2) The rates charged and benefits to be provided are fair and reasonable;
- (3) The amounts provided as working capital are repayable only out of earned income in excess of amounts paid and payable for operating expenses and expenses of providing services and such reserve as the Department of Insurance deems adequate, as provided hereinafter;
- (4) That the amount of money actually available for working capital be sufficient to carry all acquisition costs and operating expenses for a reasonable period of time from the date of the issuance of the certificate and that the health maintenance organization is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees.

The Commissioner may require such deposit up to a maximum of fifty thousand dollars (\$50,000) as he deems to be necessary for the protection of enrollees; Provided, however, that the Commissioner shall allow such deposits to be in the form of cash, securities, or certificates of deposit, or the applicant shall be permitted to post a surety bond in the specified amount. Any interest accrued as a result of such deposit shall be paid over to the applicant upon accrual.

(1977, c. 580, s. 1; 1979, c. 876, s. 1; 1983, c. 386, s. 2.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1983 amendment, effective May 26, 1983, added the last two sentences of subsection (a).



GENERAL STATUTES OF NORTH CAROLINA

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1983

I, Rufus L. Edmisten, Attorney General of North Carolina, do hereby certify that the foregoing 1983 Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

RUFUS L. EDMISTEN

*Attorney General of North Carolina*











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